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GUIDE

TO THE

LAW AND LEGAL LITERATURE

OF

SPAIN

PREPARED UNDER THE DIRECTION OF

EDWIN M. BORCHARD

LAW LIBRARIAN

BY

THOMAS W. PALMER, JR.

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PREFACE

The Library of Congress has endeavored to meet the growing demand on the part of lawyers, legislators and students for a knowledge of the law and legal institutions of foreign countries by systematically acquiring the best legal literature of the civilized states of the world. In order to make this material more readily accessible to the investigator of foreign and comparative law, the enterprise of publishing guides to foreign law was begun.

This volume is the third in the series, having been preceded by the *Bibliography of international law and continental law* (1913) and the *Guide to the law and legal literature of Germany* (1912). The Library is enabled to publish the volume at this time through the sympathetic cooperation of the Harvard University Law School. The University awarded to Mr. Thomas W. Palmer, Jr. a Sheldon fellowship for the year 1913–1914, to be devoted to the preparation of this guide. Mr. Palmer spent several months in preparatory study in the Law Division of the Library of Congress and then visited Spain, where his personal studies were aided by consultation with the foremost legal authorities of that country. In the plan of this work, the arrangement adopted in the guide to the law of Germany has been followed.

In the preparation of the work the threefold aim of the undertaking of publishing these guides has been preserved, namely: first, to furnish the lawyer and the student of comparative law with information as to the private and public law of the country; secondly, to acquaint the legislator with the recent development of legislation, particularly that designed to meet the social and economic problems of the day; and, thirdly, to furnish the jurist and historian with a guide to the contributions to the history, theory and the philosophy of law.

From practically all these points of view Spain offers a fruitful field for study. It possesses one of the oldest developed systems of law—a composite of Roman, Germanic and Arabic elements, with a strong infusion of canon law; it is growing in industrial and commercial importance; it is participating actively in the legislative movement for social and economic reform; and—of particular interest to us—it is the mother of the legal system of a large part of the world in which we have vital interests. In the insular possessions of the United States we have been brought into intimate contact with Spanish law and are there witnessing one of those curious and interesting phenomena of legal history, the blending of two systems of law. In Spanish-America, which socially, industrially, and commercially is awakening a constantly growing interest on the part of the United States, the seed laid by the Spanish colonizers has continued to germinate and flourish long after political control ceased. The present guide, indeed, is intended to constitute the foundation for a *Guide to the law and legal literature of Latin America* which is now in course of preparation.

The special thanks of the Library are due, among others, to the following gentlemen, who by their kind and sympathetic assistance have rendered an invaluable service to the enterprise: Francisco Giner de los Rios, José Varón y Caballero, Alfonso Cabello y Guillen de Toledo, Felipe Clemente de Diego, Eduardo de Hinojosa, Rafael Altamira, Constancio Bernaldo de Quirós, Emilio Miñana y Villagrasa, Manuel González Hontoria, Marqués de Olivart, Joaquin Fernández Prida, Adolfo Posada, Leopoldo Palacios Morini, Manuel Torres y Campos, Ramón Sanchez de Ocaña, Ramón Carande Thovar, Fernando Berenguer, and to various librarians, especially the librarian of the *Colegio de Abogados* of Madrid and the Chief of the Index Division of the National Library.

EDWIN M. BORCHARD
Law Librarian

HERBERT PUTNAM
Librarian of Congress
Washington, D. C., December, 1914

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GUIDE TO THE LAW AND LEGAL LITERATURE OF SPAIN

BIBLIOGRAPHY

The most useful bibliography of the legal literature of Spain, up to the date of its publication, is the work of Torres Campos [1] in two volumes. Volume one extends over the period from 1800 to 1880, and volume two from 1880 to 1896. The latter also contains useful indices, alphabetically arranged, of authors and of subjects covering both volumes. As the author states in the introduction, this work is complementary to his "studies" [2] on Spanish and foreign legal bibliography which was rewarded with a gold medal by the Madrid Academy of Notaries in the public competition of 1876. It also enjoys the distinction of being the first modern bibliography of its kind published in Europe. It includes general and special legal bibliographies and is arranged according to subject matter with subdivisions by "country."

The history of Spanish legal literature is discussed by Ureña [3] in a learned but extremely abstruse work published in 1906. The distinguished author, confining himself to a period ending at about the fourteenth century, really presents a history of legal science and offers a source book of early Spanish law and legal philosophy. Useful bibliographic notes for nearly every branch of law are included in the recent (1914) work

[1] Torres Campos, Manuel. Bibliografía española contemporanea del derecho y de la política. . . . 1800–1880 . . . Madrid, Fernando Fé, 1883. 208 p.

Same. 1881–1896. Madrid, Fernando Fé, 1898. 168 p.

[2] Torres Campos, Manuel. Estudios de bibliografía española y extranjera del derecho y del notariado. Madrid, Eduardo Cuesta, 1878. 261 p.

[3] Ureña y Smenjaud, Rafael de. Historia de la literatura jurídica española. 2d ed. Madrid, I. Moreno, 1906. 2 v.

of Posada and other collaborators, entitled "Every day law" (*infra*, p. 18).

Several Spanish legal bibliographies with descriptive notes have appeared in the English language. The "Bibliography of international law and continental law" published in 1913 by Dr. Borchard[1] of the Library of Congress includes a section devoted to the legal bibliographies of Spain. A bibliography of early legal literature is contained in the catalogue of books on foreign law presented in 1847 by Charles Purton Cooper to the Society of Lincoln's Inn.[2] Full descriptive notes are given. The lengthy introduction in Schmidt's "The civil law of Spain and Mexico" (*infra*, p. 37) is of bibliographic value and of especial use are the notes on the early codifications and compilations. The section on Spain by Altamira in the first volume of the Continental Legal History Series (*infra*, p. 36), while covering the same ground, is probably more useful and authoritative.

Kirchenheim's *Centralblatt für Rechtswissenschaft*, until it ceased publication in 1910, printed annual reports of the new Spanish legal publications. Lists of new Spanish books may also be found in Mühlbrecht's *Allgemeine Bibliographie der Staats- und Rechtswissenschaften*. The reports on Spanish bibliography in the Annual Bulletin of the Comparative Law Bureau are incomplete and unsatisfactory. All the Spanish law reviews and periodicals as for instance the *Revista de derecho privado*, the *Revista de legislación y jurisprudencia*, etc., contain sections devoted to bibliography.

Among the various catalogues the most useful is the voluminous catalogue, published in 1908, of the Bar Association of Barcelona[3] arranged alphabetically according to subject matter with author index. The Bar Association

[1] Borchard, Edwin M. The bibliography of international law and continental law. Washington, Government Printing Office, 1913. 93 p.

[2] Lincoln's Inn, Society of. Specimen of a catalogue of the books on foreign law lately presented by Charles Purton Cooper. London, C. Roworth and Sons, 1847. 80 p. (Spain.)

[3] Barcelona. Colegio de abogados. Catálogo de las obras existentes en la biblioteca. Año 1908. Barcelona, Hinrich. 486 p.

Library of Madrid[1] is at present (1914) revising and enlarging its catalogue, of which the first volume appeared in 1889. The libraries of the *Consejo de Estado*[2] and of the Department of Justice[3] published catalogues some years ago which still retain some bibliographic value. A recent catalogue of bibliographic interest was published by the Royal Academy of Jurisprudence and Legislation;[4] it contains all the new books, both Spanish and foreign, received by its library from 1902 to 1914.

Many booksellers and publishers issue useful catalogues of legal literature at frequent intervals. The most complete is that of Victoriano Suarez,[5] a well-bound volume covering every branch of the law and conveniently indexed. The principal law publishers of Spain are Hijos de Reus[6] and Góngora[7] in Madrid. Their catalogues also constitute useful bibliographies.

LEGISLATION

The official legislation of modern Spain may be said to commence with the convening of the Cortes in 1810 at Cadiz during the enforced absence of Ferdinand VII. In 1812 the first constitution, which marked the beginning of the constitutional as opposed to the absolute form of the Spanish monarchy, was promulgated. Before that time the legislation consisted of nothing more than orders or edicts from the kings with codes or compilations of laws issued under royal authority. Beginning in 1810 and continuing until 1906, the laws (*leyes*) decrees

[1] Catálogo de la biblioteca del ilustre colegio de abogados de Madrid . . . Vol. I. Madrid, Huérfanos, 1889. 481 p.

[2] Catálogo de la biblioteca del Consejo de Estado. Madrid, Guilda, 1877. 421 p.

[3] Spain. Ministerio de Gracia y Justicia. Catálogo de la biblioteca . . . Madrid, Ministerio de Gracia y Justicia, 1885. 303 p.

[4] Catálogo de las obras recibidas por la Academia Real de Jurisprudencia y Legislación desde 1902 hasta 1914. Madrid, Hijos de Hernández, 1914. 128 p.

[5] Librería de Victoriano Suarez. Catálogo de legislación, jurisprudencia, economía y ciencias sociales. Madrid, Suarez, 1913. 198 p.

[6] Hijos de Reus. Catálogo de las obras y publicaciones de la casa editorial de Hijos de Reus. Madrid, 1908. 112 p. 1913 suppl. 28 p.

[7] Góngora. Catálogo del Centro Editorial de Góngora. Madrid, 1913. 88 p.

(*decretos*) and orders (*órdenes*) enacted by the Cortes at the regular and extraordinary sessions were published officially at Madrid by the Minister of Grace and Justice. Some of the early volumes include the decrees of Ferdinand VII after his return to power. The official title [1] of this collection of legislation has varied from time to time.

An index [2] in four volumes covers the laws enacted by the Cortes as well as royal decrees from 1814 to 1860. Alarcón [3] published in 1854 a three volume *repertorio* of the legislation in force.

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[1] Colección de los decretos y órdenes que han expedido las Cortes generales y extraordinarias desde su instalación . . . 1810.
v. 1–2. 1810–1811.
v. 3–4. 1812–1813.
v. 5–6. 1813, 1820.
v. 7–8. 1820–1821.
v. 9–10. 1822–1823.
Madrid, Impr. Nacional (also Tomás Alban y Cua). 1813–1823.
Decretos del rey Fernando VII. 1814–1836.
v. 1–6 with appendix. 1814–1819.
v. 7–18. 1823–1833.
Madrid, Impr. Real. 1816–1834.
Decretos de la reina Isabel II.
v. 19–21. 1834–1836.
Madrid, Impr. Real, 1835–1837.
Colección de las leyes, y decretos . . . de los Cortes y de los reales decretos.
v. 22–35. 1837–1845.
Madrid, Impr. Nacional, 1837–1846.
Colección de legislación de España . . .
v. 36–59. 1846–1853.
Madrid, Impr. Nacional, 1848–1854.
Colección legislativa de España.
v. 60–148. 1853–1892.
Madrid, Impr. Nacional, 1854–1897.
Colección legislativa de España.
v. 1–23. 1898–1905.
Madrid, Rev. de legislación, 1898–1906.

[2] Colección de leyes, decretos, etc., Indices generales, cronológico y alfabético . . . Madrid, Impr. Nacional (etc.).
(1846–1860) Impr. Min. de Gracia y Justicia, 1862. 1 v.
(1814–1845) Impr. Nacional, 1848. 2 v.
(1837–1854) Impr. Nacional, 1854. 1 v.

[3] Alarcón, P. A. de. Repertorio de legislación vigente . . . Madrid, Tejado, 1854. 3 v.

The *Gaceta de Madrid*, published daily under the direction of the Minister of the Interior, is the official gazette or bulletin of the government. In it appear the laws, decrees and orders of the government as enacted and issued, as well as judicial decisions of the Supreme Court and public notices of interest to judges, courts and the local governing bodies.

The collection of statutes currently used by practitioners is published privately in signatures by the *Revista de legislación y jurisprudencia*.[1] This publication contains, in addition to the texts of the laws, decrees, etc., a section devoted to brief notes or discussions of legislative problems and other items of interest to the subscribers. It was begun in 1854 and ran contemporaneously with the official reports. A general index or *repertorio* to this series was published by Ramos[2] in 1882 covering the years 1854 to 1882. Volumes 105–117 (1898–1902) have also been indexed under the direction of the editors of the *Revista*.[3]

Another private collection was commenced in 1897 by the *Revista de los tribunales y legislación universal*, edited by Francisco Lastres, under the title *Anuario de legislación y jurisprudencia españolas*. Sixteen annual volumes were published up to 1913. It may be said that this publication includes both current legislation and court reports. The *Revista de los tribunales y legislación universal* (*infra*, p. 17) publishes the texts of and criticisms upon the important statutes. Under the direction of the *Revista de los tribunales* [4] a collection of the Spanish legislation has been compiled covering the statutes from 1878 on. It is published currently. The title of the work is *Repertorio de legislación española* but it is in fact a collection of the texts, with complete indices appended.

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[1] Colección completa de la legislación española . . . desde 1853. Boletín de la Revista general de legislación y jurisprudencia. Madrid, Rev. de legislación, 1854–1913. 152 v.

[2] Ramos, Rafael. Repertorio general de la legislación española. Indice sistemático del Boletín de . . . desde 1854 hasta 1882. Madrid, Rev. de legislación, 1882. 762 p.

[3] Repertorio por orden cronológico y alfabético . . . de 1898 á 1902. Madrid, Rev. de legislación, 1904. 659 p.

[4] Repertorio de legislación española publicado por la Revista de los tribunales y de legislación universal. Madrid, Góngora, 1881–1913. 35 v.

Attention may also be called to the guide or index (*diccionario-guía*) published by Gómez Herrero [1] in which, under an alphabetical subject arrangement, the statutes are listed. The legislation indexed covers the period 1808 to 1900. A useful index in two volumes of all the legislation published officially from 1810 to 1859 was published in 1860 by Caso.[2]

Collections of legislation on special branches or subjects are mentioned under their appropriate headings (*infra*). The current legislation of Spain is reviewed in a fragmentary way in the Annual Bulletin of the Comparative Law Bureau of the American Bar Association. It may be noted also that the *Revista de legislación universal y jurisprudencia española* contains a monthly summary of current Spanish legislation.

COURT REPORTS

Judicial decisions (*sentencias*) in Spain, collectively called *jurisprudencia*, are not binding precedents, although they possess great persuasive force. They were formerly a direct source of law, but the present civil code (art. 6, section 2) in summing up the recognized sources of law omits judicial decisions. In default of express legislation, primarily local customs, and secondarily general principles of law, govern. But the change from a direct to an indirect source of law has had little practical effect on the influence of decisions upon the courts. The decisions interpreting the codes and statutes are said to be strictly adhered to and contradictory interpretations not to be countenanced by the Spanish courts, but on examination of the reports of many years such conflicting decisions are found not infrequently. Only the reports of the Supreme Court are published and these only constitute *jurisprudencia*.

The Supreme Court (*Tribunal Supremo*), the indirect successor of the *Consejo real de Castilla*, was created by the *Cortes* of Cadiz through article 259 of the Constitution of 1812. It experienced the same vicissitudes, however, through

[1] Gómez Herrero, Teodoro. Diccionario-guía legislativo español. Madrid, Ricardo Fé, 1890–1903. 5 v. and 2 suppl.

[2] Caso, José Indaleco. Guía legislativa. Indice general de las leyes, etc., en la colección legislativa oficial de España desde 1810 hasta el día . . . Madrid, Alejandro Gómez Fuentenebro, 1859–1860. 2 v.

which the Constitution passed and it was not until 1834 that it was finally organized. The Supreme Court [1] published in 1909 a brief sketch of its history and the names of all its judges since 1812. Official reports [2] were published from the year 1846 to 1904. Beginning with 1874 the civil and criminal reports are issued separately. The reports are to-day published officially in the *Gaceta* (*supra*, p. 11), which is bound and kept in all the law libraries. Because of the unwieldiness of these reports, however, the privately issued collections are preferred.

The Supreme Court from its establishment to 1875 had a special chamber, *sala*, for appeals against the administration. In 1875 this judicial power was conferred on a division or committee of the Council of State, which eventually (1888) became the *Tribunal contencioso-administrativo del Consejo de Estado*. This existed until 1904 when the *Tribunal contencioso-administrativo* was made the present third *sala* of the Supreme Court, with the same jurisdiction. The decisions and decrees of the Council of State [3] were published officially from 1860 to 1903 under the title first of *sentencias* of the Council of State, and later as *jurisprudencia administrativa*. These volumes are individually indexed both chronologically and alphabetically.

A complete and important collection of reports is edited privately by the *Revista de legislación y jurisprudencia* in loose sheets appearing monthly. These reports are issued contemporaneously with the official reports and are now used by the profession to the same extent as the official reports.

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[1] El tribunal supremo. Notas relativas á su origen y vicisitudes y relación de su personal desde 1812. Madrid, Fortanet, 1909. 97 p.

[2] Colección legislativa de España. Sentencias del Tribunal Supremo de Justicia. Madrid, Ministerio de Gracia y Justicia, 1846–1874. 80 v.

Same. Materia civil. Madrid, Ministerio de Gracia y Justicia (etc.), 1874–1904. 55 v.

Same. Materia criminal. Madrid, Ministerio de Gracia y Justicia (etc.), 1874–1904. 56 v.

(From 1895 to 1904 the reports were published by the government in the publishing house of the *Revista de legislación*.)

[3] Colección legislativa de España. Sentencias del Consejo de Estado. (etc.). Madrid, Ministerio de Gracia y Justicia (etc.). 1860–1903.

The civil reports[1] begin in 1838, the criminal[2] in 1870, and the administrative[3] in 1850. Reports of civil and administrative law are likewise issued in the form of fortnightly advance sheets by private publishers in Madrid (*La jurisprudencia del día*). This constitutes a useful addition to the practicing attorney's library and is extensively used.

The *Revista de los tribunales* published separately up to 1894 lengthy digests of the civil (1839–1904, 20 vols.), criminal (1870–1894, 2 vols. 12 app.), and administrative (1880–1894, 12 vols.) decisions of the Supreme Court, and also those involving mortgages (1874–1894, 11 vols.). From 1894 to 1914 all branches appear together in twenty volumes. The doctrines established by the court are given clearly and concisely. The *Revista* publishes the digests weekly as a detachable section of the periodical.

The reports have been indexed or digested in whole or in part in the separate divisions. Pantoja[4] published a *repertorio* of the civil reports in two volumes with four appendices extending over the years 1838 to 1887. The work has appeared in a third edition. The period from 1883 to 1909 has been covered by the editorial board of the *Revista de legislación*[5] under the direction of Eduardo Dato, formerly Minister of Grace and Justice and now president of the *Consejo de Ministros*. This is designed more especially for the use of the subscribers of the reports published by the *Revista de legislación*. The criminal law reports from the establishment of the special criminal chamber of the Supreme Court in 1870 until

[1] Biblioteca jurídica de la Revista general de legislación y jurisprudencia. Sección de jurisprudencia civil. Madrid, Rev. de legislación, 1838–1913.–. 123 v.

[2] Biblioteca jurídica de la Revista general de legislación y jurisprudencia. Sección de jurisprudencia criminal. Madrid, Rev. de legislación, 1870–1913.–. 88. v.

[3] Biblioteca jurídica de la Revista general de legislación y jurisprudencia. Sección de jurisprudencia administrativa. Madrid, Rev. de legislación, 1850–1913.–. 81 v. [volumes 33–40 have never been published].

[4] Pantoja, José María. Repertorio de la jurisprudencia civil española (años 1838 á 1887). 3d ed. Madrid, Hijos de Reus, 1887. 2 v. 4 app.

[5] Repertorio doctrinal y legal de la jurisprucencia civil (años 1883 á 1909) por la Redacción de la Revista general de legislación y jurisprudencia. 2d ed. Madrid, Hijos de Reus, 1912. 6 v.

1882 were digested in five volumes by Pantoja.[1] The administrative law reports from 1846 until the abolition of the contentious administrative jurisdiction in 1868 were digested by Pantoja,[2] and from the establishment of the Contentious Administrative Tribunal in 1888 until 1904 by the board of the *Revista de legislación*[3] under the direction of Eduardo Dato. This likewise is designed as an aid in using the reports of the *Revista de legislación*. The reports of the special administrative court from the date of its organization to 1896 were officially digested.[4]

There are several collections and digests of decisions on special branches of the law or interpretations of codes, e. g., commercial law, the civil code, etc. These publications are cited under their appropriate headings.

An extensive digest of reports from 1838 to 1887 in the form of an encyclopedia of the points of law raised and decided in the Supreme Court was compiled by Sáenz-Hermúa.[5] The work is especially arranged with reference to the civil code, although supplements cover criminal and administrative law.

GENERAL WORKS

There are several extensive general encyclopedias and dictionaries of Spanish law. An encyclopedia published in 1864 by a society of lawyers and writers, under the direction of Sanguineti,[6] purports to be a general compilation of all the

[1] Pantoja, José Maria. Repertorio de la jurisprudencia criminal. Madrid, Hijos de Reus, 1875–1885. 5 v.

[2] Pantoja, José Maria. Repertorio de la jurisprudencia administrativa (años 1846 á 1868). Madrid, Hijos de Reus, 1869. 1600 p.

[3] Repertorio doctrinal por orden alfabético de la jurisprudencia administrativa española por la Redacción de la Revista de legislación bajo la dirección del Eduardo Dato. Madrid, Hijos de Reus, 1888–1904. 2 v.

[4] Repertorio alfabético por materias de todas las sentencias y autos dictados por el Tribunal de lo contencioso-administrativo desde su creación hasta el día 15 de 1896. Madrid, Rev. de legislación, 1896. 659 p.

[5] Sáenz-Hermúa y Espinosa, P. Diccionario recopilador de los puntos de derecho resueltos en sentencias del Tribunal Supremo de Justicia desde 1838 hasta 1887. . . Madrid, V. Suarez, 1884–90. 4 v. and 3 suppl.

[6] Sanguineti, Carlos Massa. Diccionario jurídico-administrativo . . . Madrid, Rev. de legislación (etc.), 1858–1864. 5 v.

laws. Escriche[1] in 1831 published a general encyclopedia of the legislation and court reports, which, in its later editions, is still cited as authority in Spanish-American courts. In this work he was assisted by some of the leading jurists of Spain. A lengthy and ambitious legal encyclopedia was begun in 1848 by Arrazola,[2] a Justice of the Supreme Court, in collaboration with many others. By 1870 twelve volumes had appeared, but only the first three letters of the alphabet had been covered. The work has never been completed. The latest legal encyclopedia is now in course of publication under the direction of Pedret, Oliver Rodríguez, and Torres Ballasté.[3] Eight volumes and two appendices have appeared, but they cover only a few letters of the alphabet. This work when completed will be an exhaustive repository of the law, on the order of Fuzier-Herman's *Répertoire* for France. It gives definitions, expositions, and even the full texts of the important statutes. In the useful three-volume work of Martínez Moreda,[4] published in 1905, the legal terms and words ordinarily used are defined, especially those dealing with civil and commercial law. As it is inexpensive, it is widely used.

Martínez Alcubilla[5] has furnished what is probably the most extensive and what has become the standard encyclopedia of Spanish law. The work originally comprehended nine volumes, but new appendices are constantly published. The publishers announce that a new edition condensing the appendices is now (1914) in course of preparation. Aleu's[6] dictionary of

[1] Escriche, Joaquin. Diccionario razonado de legislación y jurisprudencia. Nueva ed. Madrid, Eduardo Cuesta, 1874–1876. 4 v. 1st ed. Paris, 1831; 2d ed. Madrid, 1839–1840; 3d ed. (with suppl.) Madrid, 1847–1851.

[2] Arrazola, Lorenzo (and others). Enciclopedia española de derecho y administración ó nuevo teatro universal de la legislación de España é Indias. Madrid, Rev. de legislación, (etc.) 1848–1870. 12 v.

[3] Pedret y Torres, Victor; Oliver Rodríguez, Enrique; and Torres Ballasté, Juan. Enciclopedia jurídica española. Barcelona, Francisco Seix, 1910–1911. 8 v. and 2 app. through 1912.

[4] Martínez Moreda, Mateo. Diccionario de legislación vigente. Madrid, Felipe González Rojas, 1905. 3 v.

[5] Martínez Alcubilla, Marcelo. Diccionario de la administración española. 5th ed. Madrid, Administración, 1892–94. 9 v. and 21 pendices through 1912.

[6] Aleu y Carrera, Manuel. Diccionario de la administración municipal de España. 2d ed. Madrid, A. Peréz y C[ia], 1908–11. 8 v.

municipal administration occupies a broader field than the title indicates and is a work of much practical use. The editors[1] of the *Gaceta* have published an encyclopedia of law, with commentaries on all legislation to 1907. Three supplements extend the work through 1910. There may also be mentioned Hermur Espinosa's *diccionario*[2] of the law as created by judicial decisions extending over the years 1838 to 1890.

The leading general periodicals of Spanish law are the *Revista de legislación y jurisprudencia* and the *Revista de los tribunales*, both published in Madrid. The former was established in 1852 by Reus, and is now directed by the well known jurist and publicist, Eduardo Dato. Both journals have as contributors the leading jurists of the country. Articles on subjects of legal interest and discussions of points of law are included as well as accounts of new legislation and recent important decisions. Prof. Clemente de Diego of the University of Madrid with the collaboration of José MaNavarro de Palencia established in 1913 a new legal periodical (*Revista de derecho privado*) devoted exclusively to the study of practical questions in Spanish civil, mercantile and administrative law. It has enjoyed a remarkable success in its first year of existence. Another new general law magazine (*Juris*) appeared in January, 1914, edited by Eduardo Barriobero of Madrid, a lawyer of reputation and a member of the *Cortes*. Its published numbers have received some adverse criticism.

A pretentious enterprise was begun in 1885 by Romero and García Moreno,[3] assisted by many lawyers and publicists, with the purpose of collecting and compiling the texts of the laws and codes of the nations of modern times. Appendices

[1] Nuevo y completo diccionario administrativo . . . por la Redacción de "Gaceta Administrativa." Madrid, Gaceta Adm., 1910. 3 v. with 3 suppl.

[2] Hermur Espinosa, Pedro Sáenz. Diccionario recopilador de los puntos de derecho resueltos en sentencias del tribunal supremo de justicia desde 1838 hasta fin de Diciembre de 1885. Madrid, Huérfanos, 1886–1890. 4 v. and 3 app. carrying the work to 1890.

[3] Romero y Girón, Vicente and García Moreno, Alejo. Colección de las instituciones políticas y jurídicas de los pueblos modernos. Madrid, de Góngora, 1885–1910. 1st series, 1885–1889. 13 v.; 2d series, 2 v. and 19 app.

have extended the work to 1910. It may be noted that two entire volumes are given over to a commentary on the Spanish civil code. An extremely useful and interesting book entitled "Every day law" (*Derecho usual*) was published in 1913–14 by Posada [1] with the object of presenting in language intelligible to the layman a brief exposition of all branches of the law. Posada contributed sections on "general ideas of law," political and administrative law, social and labor laws; Clemente de Diego, Sela, Bernaldo de Quirós and Sangro prepared the sections on civil, mercantile, international, criminal and procedural law respectively.

A treatise for the practical use of members of the clergy covering civil, procedural, criminal and administrative law was prepared by Pellicer.[2] A second edition was published in 1910.

There are several publishing houses in Spain which regularly issue manuals and annotated editions of all the codes and important statutes, revising them as changes in the law may require. Hijos de Reus and the Centro Editorial de Góngora of Madrid are the chief and most reliable of such establishments. M. Soler of Barcelona edits convenient pocket manuals on every branch of the law. Abella, the director of *El consultor de los ayuntamientos y de los juzgados municipales* of Madrid, who publishes the most complete collection of manuals and annotated texts in the field of administrative law, edits most of the codes and other laws as well. Two lawyers of Madrid, León Medina and Manuel Marañón have compiled annotated collections of legislation including civil, criminal, administrative and special laws. These collections are the ones currently employed by the profession. It may also be mentioned that J. Vila Serra of Valencia publishes small editions of the codes, various manuals and collections of special statutes and laws.

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[1] Posada, Adolfo; Clemente de Diego F.; Sela y Sampil, A.; Bernaldo de Quirós C.; Sangro, P. Derecho usual. Madrid, La lectura, 1914. 567 p.

[2] Pellicer y Guíu, José. Tratado teórico-práctico de derecho civil, procesal, penal y administrativo para uso del clero. 2d ed. Zaragoza, Cecileo Gasca, 1910. 2 v.

LEGAL EDUCATION

The subject of legal education in Spain has never attracted much attention. While the overcrowded law schools comprise the largest departments of the universities, little or no modern literature has appeared in regard to the preliminary training of lawyers and the general advancement of the bar. The jurist Posada [1] in 1889 published a discussion of the teaching of law in the Spanish universities and advanced some ideas for its reformation. The education of applicants for the bar and the social standing of the Spanish lawyer of the first half of the nineteenth century are described briefly in an early number of the Law Magazine, volume 13 (1835) pages 306–309. For purposes of comparison there may be noted an article in the July (1914) issue of Case and Comment, volume 21, pages 142–143, on legal education in Spain at the present time. A brief account of the existing state of legal education and the requirements for admission to the bar in Spain and in Porto Rico was presented by a Porto Rican attorney, Rodríguez-Serra in an address before the American Bar Association in 1910, and reprinted in the Report for that year, volume XXXV, pages 840–845.

Altamira has discussed the state of the teaching of the history of Spanish law in the 1909 *Bulletin hispanique*, volume 11, pages 172–199. Numerous articles of more or less interest by various authors may be found in the *Revista de legislación* and the *Revista de los tribunales* in regard to legal education in general and to the teaching of special branches of law.

JURISPRUDENCE AND PHILOSOPHY OF LAW

The Spanish word *jurisprudencia*, as defined by a leading Spanish dictionary (Aleu), is the practice or custom (*hábito*) of interpreting rightly the laws and of applying them opportunely to the cases that arise. It is used also to denominate as a whole the decisions (*sentencias*) of the Supreme Court. But a broader meaning is often applied—the science of law or general jurisprudence, a conception better known to the Anglo-American lawyer.

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[1] Posada, Adolfo. La enseñanza del derecho en las universidades. Madrid, Fé, 1889. 130 p.

Four great epochs may be said to mark the growth and progress of the study of the science of law and its closely related subject, the philosophy of law in Spain—the early or primitive period, the Renaissance, the period of the influx of the French encyclopedists, and finally the Constitutional period of the 19th century extending to and including the present day.

Little is known of the early or first epoch. The volumes of San Isidoro[1] (570–630), "*Libri sententiarum*" and "*Etymologiarum libri*", of the collection of his works edited by F. Arévalo, have given him prominence in the field of jurisprudence. The Catalan jurist, Raimundo Lulio, may also be mentioned as of importance during the primitive period, although he lived several centuries later than Isidoro.

During the period of the Renaissance numerous legal theorists and philosophers appeared. One of importance was Francisco de Vitoria[2] (1480–1546), whose influence was felt in the field of international law as well. The sections "*De civile potestate*", "*De potestate pontificis*", and "*De Indis et jure belli*" in the work "*Relectiones theologicae* XIII" are of especial worth. Vives[3] (1492–1540) made several contributions to the literature of the period, among which may be enumerated "*De causis corruptarum artium*", "*De comunione rerum, principes Germanice inferioris*", "*Praelectio in leges Ciceronis*", and "*De disciplinis*", collected with other monographs in eight volumes. Mariana's[4] work concerning the king and the institution of kingship has appeared in three Spanish editions. Suárez,[5] a Jesuit, sums up with the greatest completeness and elaboration the scholastic doctrines of the law in a work published in 1613. It has undergone many editions of various worth. An "idea of a politic-Christian prince represented in a hundred undertakings", including introductions to the policy and principle of the state, is an interesting subject treated by

[1] Isidoro, San. Opera omnia, . . . de Faustino Arévalo . . . propitiones, notas, collationes. Rome, Aut-Fulgoni, 1797–1803. 10 v.

[2] Vitoria, Francisco de. Relectiones theologicae XIII partibus per varias sectiones in duos libros divisae. Salamanca, 1565 by P. Af. Muñoz, his disciple. Madrid, M. Martin, 1765. 607 p.

[3] Vives, Luis. Opera omnia. Valencia, Bened. Monfort, 1782–9. 8 v.

[4] Mariana, J. De rege et regis institutione. Toledo, Pedro Roderico, 1599. 446 p.

[5] Suárez, F. De legibus ac Deo legislatore. Salamanca, Gómez de Lonreyro, 1612. 1266 p.

Saavedra Fajardo,[1] a writer of some reputation. Gracian's[2] works, "The discreet", "The hero", "The political Fernando", and the "Manual oracle and art of prudence", are worthy of reference. A list of the writers of this epoch would be incomplete which does not mention the names of Ginés de Sepúlveda, Vazquez Manchaca and Baltasar de Ayala.

Toward the second half of the eighteenth century the influence of the French encyclopedists dominated legal science in Spain. A few representatives of the old traditions remained, among others Father Ceballos and Father Alvarado. The change of the attitude of the Church from the liberalism of the middle ages to the eighteenth century absolutism seems to have had the reverse effect upon the jurists, who turned from absolutism to liberalism.

There are a few valuable contributions to legal literature during this period. The Count of Campomanes[3] published in 1788 a discussion of the "impartial suit over the ecclesiastical monition of Parma" and an earlier treatise on the royal rights of mortmain in 1765. Jovellanos[4] in 1787 prepared a discussion of the agrarian law (published 1795) which, as well as his article in defense of the Central Council, is of some merit. Of especial interest are his political ideas expressed in the second part of the last-named article. Martínez Marina[5] has

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[1] Saavedra Fajardo, D. de. Idea de un príncipe político cristiano representada en cien empresas. Last ed. Valencia, Salvador Jauli, 1800–1801. 2 v. [1st ed. Monaco, Nicolas Eurico, 1640. 753 p.]

[2] Gracian, Baltasar. El discreto. Barcelona, Juan Deden, 1647. 388 p.
Same. El heroe. Amsterdam, Diego Diaz, 1639. 747 p.
Same. El político Don Fernando. Huesca, Juan Nogues, 1644. 222 p.
Same. El oráculo manual y arte de la prudencia. Lisboa, Henrique Valente de Oliveiva, 1657. 272 p.

[3] Campomanes, Conde de. Juicio imparcial sobre el monitorio de Parma. Madrid, 1788.
Same. Tratado de la regalia de amortización. Madrid, 1765.

[4] Jovellanos, Gaspar Melchor de. Informe . . . en el expediente de la ley agraria . . . Madrid, Sancha, 1795. 149 p.
Same. Memoria en defensa de la Junta Central. Madrid, 1810.

[5] Martínez Marina, Francisco. Teoría de las Cortes o grandes juntas nacionales de los reinos de Leon y Castilla . . . Madrid, Fermin Villalnando, 1813. 2 v.
Same. Ensayo histórico-crítico sobre la antigua legislación y principales cuerpos legales de los reinos de Leon y Castilla . . . Madrid, Hija de Joaquin G. Carra, 1808. 450 p.

produced two leading works—the theory of the Cortes or the great national congresses of the kingdoms of Leon and Castile and the historico-critical essay on ancient Spanish legislation. Florez Estrada,[1] whose treatise on political economy experienced four editions to 1835, discussed in the course of a later work (1839) the social question, origin, latitude, and effects of the law or rights of property. There must be enumerated also the names of Benito Jerónimo Feijo, and the Counts of Floridablanca and Cabarrús who were among the great jurists of this period.

The constitutional movement in Spain begins with the convening of the Cortes of Cadiz in 1812 and this may be said to constitute the fourth epoch in the history of the philosophy of law. It extends to the present day. Among those who represent the first half of the nineteenth century Donoso Cortés, Balmes and, in the second half, Sanz del Rio have exerted a lasting influence. Donoso Cortés [2] represents a very conservative theological school. He brought himself into prominence at the age of 27 by a series of lectures on political law delivered in the Ateneo of Madrid. A complete edition of his works was published in 1854. His essay on catholicism, liberalism and socialism exercised particular influence. Balmes [3] was of the theological school, but in truth he was a philosopher. His works include many dealing with general philosophy. His politico-legal theories are comparable to those of Donoso Cortés, except that Balmes defends the old form of monarchy as distinguished from a constitutional

[1] Florez Estrada, Alvaro. Curso de economía política. 4th ed. Madrid, Miguel de Burgos, 1835. 2 v.

Same. La cuestión social, origen, latitud, efectos del derecho de propriedad. Madrid, 1839.

[2] Donoso Cortés, Juan. Obras de . . . ["Lecciones de derecho político pronunciadas en el Ateneo de Madrid," vol. 1, pp. 115–272; Principios constitucionales aplicados al proyecto de ley fundamental, etc. vol. 1, pp. 309–347. Ensayo sobre el catolicismo, el liberalismo y el socialismo. vol. 4. pp. 1–406]. Madrid, Fejado, 1854. 4 v.

[3] Balmes, Jaime. Escritos políticos de . . . Madrid, Operarios, 1847. 808 p..

Same. La Sociedad, revista religiosa, filosófica, política y literaria. 5th ed. Barcelona, Barcelonesa, 1889. 4. v. in 2.

Same. El criterio. Barcelona, Antonio Brusi, 1846. 384 p.

Same. Miscelánea religiosa, política y literaria. Barcelona, Barcelonesa, 1909. 317 p.

monarchy. Among the writings of merit touching upon the philosophy of law and jurisprudence are a one volume collection of "political writings," of which the essay, the "thought of a nation," is of especial value, a two volume review of society from a religious, philosophical, political and literary viewpoint, and the work "*El criterio.*" A volume of selected miscellaneous political and religious articles was published recently (1909). Sanz del Rio,[1] a follower of Krause, has enjoyed perhaps the greatest influence among the liberals. Such modern leaders as Giner de los Rios, Salmeron and Azcárate are his deciples. Besides his purely philosophical works, he has published the "Ideal of humanity for life," an adaptation of the book of Krause on ethics, politics and sciology.

The most important and best representative of the Catholic school is Prof. Juan M. Orti y Lara, still active at the age of eighty-nine.[2] His "Introduction to the study of law and principles of natural law" is one of the leading works of Spanish law. He has written several essays and interesting introductions to translations of foreign works. His address on "Opposed theories of the purpose and end of the state from the conception of its evolution or creation" before the Academy of Moral and Political Sciences attracted much attention.

Prof. Giner de los Rios,[3] professor of philosophy of law in the University of Madrid and the leading Spanish contemporary authority on the subject, is a disciple of Krause and Sanz del Rio. He has published a collection of essays or studies on legal and political questions in 1879, several notes to Ahrens' juristic encyclopedia and the work "The social person" (1899). Two of his important contributions to the philosophy of law

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[1] Sanz del Rio, Julian. Ideal de la humanidad para la vida. 2d ed. Madrid, 1871. 2 v.

[2] Orti y Lara, Juan Manuel. Introducción al estudio del derecho y princípes de drercho natural. Madrid, 1878.

Same. Teorías opuestas entre si acerca del estado y su fin, según que proceden del concepto de la evolución ó del concepto de la creación. Madrid, Jaime Ratés, 1908. (Vol. VII, pp. 199–288 of Discursos de recepción de la academia de ciencias morales y políticos.)

[3] Giner de los Rios, Francisco. Estudios jurídicos y políticos. Madrid, V. Suarez, 1875. 344 p.

Same. La persona social. Estudios y fragmentos . . . Madrid, V. Suarez 1899. 433 p.

have been published with the collaboration of the late Calderón. These are a "*Resumen*" of philosophy of law [1] (1898) and "principles of natural law." [2] The former work, of which only one of two projected volumes has appeared, contains a summary of the principal problems of the philosophy of law, a preliminary article relating to the ordinary understanding of law, and an introduction dealing with the conception, encyclopedia, sources and method of philosophy of law with general, special and organic parts of this science. Calderon [3] himself has produced many leading essays and monographs gathered in the volume "Trifles" and others.

The works of the late Costa, who died in 1911, make him one of the foremost Spanish jurists. He, too, is a disciple of Krause, although his theories, etc., indicate the great influence of the historical school of Savigny and Puchta, especially of the former. Costa [4] has dealt with such interesting topics as "The life of law" (an essay concerning customary law), "Theory of the juridic fact, individual and social," and "The problem of ignorance of law." In addition, he has published a collection of legal and political essays. He has influenced more than anyone else the development of the study of the customary law of Spain. Another collection of political and philosophical studies of importance came from the pen of Prof. Azcárate,[5] the president of the noted Institute of Social

[1] Giner de los Rios, Francisco and Calderón, Alfredo. Resumen de filosofía del derecho. Madrid, V. Suarez, 1898. 399 p.

[2] Giner de los Rios, Francisco and Calderón, Alfredo. Prolegómenos del derecho. Principios de derecho natural sumariamente expuestos . . . Madrid, Biblioteca de Instrucción y Recreo (no date). 290 p.

[3] Calderón, Alfredo. Nonadas. Bilboa, Impr. Artística de Müller y Zavaleta, 1896. 322 p.

[4] Costa, Joaquin. La vida del derecho. 2d ed. Madrid, "Biblioteca Costa," 1914. 272 p.

Same. Teoría del hecho jurídico individual y social. Madrid, Rev. de legislación, 1880. 377 p.

Same. El problema de la ignorancia del derecho y sus relaciones con el status individual, el referendum y la costumbre. Madrid, San Francisco de Sales, 1901. 105 p.

Same. Estudios jurídicos y políticos. Madrid, Rev. de legislación, 1884. 439 p.

[5] Azcárate, Gumersindo de. Estudios filosóficos y políticos. Madrid, 1878.

Same. Ensayo de una introducción al estudio de la legislación comparada y programa de esta asignatura . . . Madrid, Rev. de legislación, 1874. 188 p.

Reforms. Azcárate is of the Krausian school and also a follower of Sanz del Rio. He prepared, in 1874, an interesting introduction to the study of comparative legislation, followed by an outline of his course on this subject in the University of Madrid law school. Most of his works deal with political economy, comparative law and social science, and have caused him to be regarded as a leader in these fields.

An important contribution by the late Prof. Gil y Robles[1] appeared in 1895 as a prologue to the Spanish translation of Stahl's "History of the philosophy of the law." The author, who is of the Catholic school, is one of the most important of modern conservative theorists. His treatise on political law according to the Christian principles of philosophy and law also warrants mention. His monographs on "absolutism and democracy" and the "legal methodology" show evidences of the influence of Krause.

Prof. Dorado Montero[2] is the most important Spanish author of a philosophy of law from a positivist point of view. However, in his penal studies, for which he is best known, he shows the influence of Krause. His leading contributions to the literature of jurisprudence and philosophy of law are the "Bases for a new penal law," the "Social value of laws and authorities" and the "Law and its priests," a substantial book on the most interesting problems of the philosophy of law. Rivera Pastor,[3] who shows inclinations toward Stammler, published, comparatively recently (1910), an interesting discussion of the doctrines of law and of the state and in 1913 a monograph on the "logic of liberty", published in volume

[1] Gil y Robles, Enrique. Tratados de derecho político según los principios de la filosofía y el derecho cristianos . . . Salamanca, Salmanticense, 1889. 2 v.

Same. El absolutismo y la democracia. Salamanca, J. Nuñez Izquierdo, 1891. 61 p.

Same. Ensayo de metodología jurídica . . . Salamanca, Salmanticense, 1893. 223 p.

[2] Dorado Montero, Pedro. Bases para un nuevo derecho penal. Barcelona, M. Soler [1902]. 200 p.

Same. Valor social de leyes y autoridades . . . Barcelona, M. Soler [1903]. 201 p.

Same. El derecho y sus sacerdotes. Madrid, Rev. de legislación, 1909. 592 p.

[3] Rivera Pastor, Francisco. Las doctrinas del derecho y del estado. Madrid, V. Suarez, 1910. 214 p.

X (1913), pages 401–448, of the *Anales de la junta para amplicación de estudios*. Rios Urruti, also a disciple of Stammler, has contributed to the new neokantian philosophy of law his monograph "The problem of the continuity in politics" (volume II, 1911, pp. 1–24, 152–162, *La lectura*) and some others, as well as his introduction to the translation of Jellinek's "General theory of the state."

There are many others who have enriched Spain's legal literature in this field. Among these, Concepción Arenal occupies a prominent place. She was an extraordinary penologist and moralist, and probably the foremost woman publicist of the world in this field. The jurists and publicists, Santamaría de Paredes, Alas, Posada and Novarro Flores can not be omitted in a roll of Spanish writers in the general branches of jurisprudence and philosophy of law.

A notable achievement in Spain for the advancement of the science of jurisprudence and comparative law was the establishment in Madrid of the *Instituto Ibero-Americano de Derecho Positivo Comparado* in December, 1908. The founders comprise many of the leading publicists and jurists of Spain. The purpose of the Institute is to promote and improve juridical and social relations between Spain and the Spanish-speaking nations of America, although all the American and European nations are invited to take part in its program.

LEGAL HISTORY

The history of Spanish law assumes far more than a local importance. In the early Spanish codes and compilations may be traced some of the most lasting institutions of Roman law, and they were the medium through which Spain carried her law into the new world. The adminstration of the Philippines and other former Spanish possessions by the United States has brought us into intimate contact with much of the law of these early compilations, and revived an interest in their study.

It is impossible to trace the law and legal institutions of Spain to the time anterior to all foreign contact. The Iberians and the Celts are sometimes considered indigenous inhabitants of Spain, but, according to better opinion, they were invaders. We do not know whether or not there

existed among them utilizable texts of law. The Phoenician and Greek colonizations, which followed the occupation of the Iberians and Celts, have likewise left us no texts. J. Costa[1] has in several works published the results of his researches into this period of Spanish legal history, and "has attempted to differentiate the sources of the customs or laws of the first inhabitants of Spain known to history." His *Plan de historia* offers especially a complete guide to the institutions of the Roman and civil law introduced into the Peninsula during the period of Roman rule (200 B. C. to 400 A. D.).

The Visigoths, a branch of the great nation of the Goths, made the conquest of Spain in the fifth century and created a new Germanic law by the side of the Roman law. This Roman law the conquerors recognized as peculiar for Spanish-Romans and they codified it during the reign of Alaric. This compilation is known in history under the name of the Breviary or Code of Alaric (506) and, among scholars of the present day, as the *Lex romana visigothorum.* It is interesting to note that no Spanish edition of this code exists. The edition generally recommended is the recent German translation made by Prof. Max Conrat (Cohn)[2] from Haenel's[3] Latin edition, which furnishes a systematic classification by subject matter. The German influence on Spanish law is admirably described in a monograph by Hinojosa.[4]

The customary laws of the Visigoths were codified by their King Euric (467–485) who is accorded the honor of having been the compiler of the earliest code of the laws of Spain. It

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[1] Plan de historia. Ensayo de un plan de historia del derecho español en la antiguedad. By Joaquin Costa. (Revista general de legislación y jurisprudencia, vol. 68, 1886, pp. 527–557; vol. 70, 1887, pp. 143–163, 228–315; vol. 74, 1889, pp. 496–506; vol. 75, 1889, pp. 96–118, 441–453).

Costa, Joaquin. Estudios ibéricos. Madrid, V. Suarez, 1891–5. 207 p.

Costa, Joaquin. Organización política, civil y religiosa de los celtibericos. Madrid, M. Murillo, 1879. 48 p.

[2] Conrat (Cohn), Max. Breviarium Alaricianum; römisches recht im fränkischen reich in systematischer darstellung . . . Leipzig, J. C. Hinrichs, 1903. 813 p.

[3] Haenel, Gustavos. Lex romana visigothorum. Lipsiae, B. G. Teubneri, 1849. 468 p.

[4] Hinojosa, Eduardo de. Das germanische element im spanischen rechte. Weimar, Hermann Böhlaus Nachf. 1910. 79 p

is not certain that we possess to-day the text of this code of Euric.

The two bodies of Spanish population, Latin and Teutonic, continued to live under this double system of law until the reign of Kindasvinth (642–653). He reduced the dual or racial legislation to one common code based on all the prior codes and statutes. His son and succeeding kings modified and added to this code, which came to be known under the name "*Fuero juzgo.*" By this legislation the influence of the Germanic spirit became fixed as one of the universal factors in Spanish law and temporarily, at least, destroyed the work of Romanization. In an old volume (1819) of the Edinburgh Review (vol. 31, pp. 94–132) there is a short description in English of the Gothic laws, especially the criminal trials, written in an interesting but "story-like" style.

The "*Fuero juzgo*" is known under the following names: "*Codex legum,*" "*Liber gothorum,*" "*Lex wisigothorum,*" "*Liber judicum,*" and "*Forum judicum*"; the latter title was changed at the beginning of the thirteenth century into "*Fuero juzgo*" by which it is now known. "*Fuero juzgo*" is really a contraction of "*Fuero de los jueces,*" or the law of the judges. It arose, as has been shown, from the gradual fusion or amalgamation of the Roman and Gothic law. The doctrines of civil law which are at greatest variance from the strict Roman law are those relating to marriage, conjugal property, family relationship, some principles of property, and much of the law of persons. On the other hand, the preponderance of the Roman law is seen in matters of inheritance, especially testamentary, and of prescription and contracts; though, as regards the form of these last, a broad and liberal principle prevails very different from the rigid classification of the Roman law.

In form the "*Fuero juzgo*" has little pretension to method and logical arrangement. It contains a preliminary title and 12 books which contain 54 titles, subdivided into some 578 laws, parts of which are attributed to different kings. The preliminary title treats of the election and duties of monarchs and the duties of their subjects, and includes the public law of the Visigothic monarchy formed in the Fourth Council of Toledo. Although imperfect, this title includes in reality one of the earliest written constitutions of Europe in which are

recognized principles as liberal as those known to any modern monarchical constitution. Within the 12 books are contained laws for the making of laws, procedure, family relations, administration of estates, contracts, mortgages, crimes, torts, real property, maritime commerce and various questions. An early edition of this code has been translated into English by S. P. Scott[1] under the auspices of the Comparative Law Bureau of the American Bar Association. The translation and the skill of the editor are severely criticised by some of the leading authorities in this field. Judge Lobingier presents a good summary of the contents of the *Fuero juzgo* and a description of its sources in the Illinois Law Review volume 8 (1913) pages 1–18.

For historical purposes and for accuracy the edition of the "*Fuero juzgo*" by Zeumer,[2] published under the section of "*Leges*" in the "*Monumenta germaniæ historica*," is probably the best. The Royal Academy[3] of Spain produced in 1815 an edition which, as a literary and philosophical work, is deserving of much commendation. It can not be relied on for practical reference, however. It embodies a learned dissertation on the law of the Visigoths and a preliminary title, "*De electione principum*", not to be found in the foreign editions.

Following the Arabic conquest of the Visigoths in the eighth century, a vast and varying body of law arose which added to the complexities of Spanish law. Altamira[4] in his recent (1914) work on questions of the history of law, discusses the Moslem rule in its influence upon Spanish law and presents a compact résumé of the period. For a thorough study of the influence of the Moslem rule a brochure of Ureña[5] may be recommended. This article was reprinted in his history

[1] Scott, S. P. The visigothic code. Boston, Boston Book Co., 1910. 420 p.

[2] Monumenta germaniae historica. Leges, Sectio I, tomus 1, Leges visigothorum edidit Karolus Zeumer. Hannoverae, Impensis Bibliopolii Hahniani, 1902. pp. 33–456.

[3] Fuero juzgo en latin y castellano, cotejado con los mas antiguos y preciosos codices por la Real Academia Española. Madrid, Ibarra, 1815. 231 p.

[4] Altamira y Crenea, Rafael. Cuestiones del historia de derecho y legislación comparada. Madrid, Sucesores de Hernández, 1914. 402 p.

[5] Ureña y Smenjaud, Rafael de. La influencia semita en el derecho medioval de España. Madrid, Rev. de legislación, 1898. 44 p.

of Spanish legal literature,[1] which is a summary of the lectures on the history of Spanish legal literature delivered by Ureña at the University of Madrid, 1907–1908. The lectures include a study of the legal literature of primitive, Roman, Gothic and Arabic Spain. In Martínez Marina's[2] historical work there may be found an account of the institutions of public and private law in this period.

The rulers of Castile, whose power became predominant among the small states that had been established, promulgated several general codes and compilations of laws. Among these the *Fuero viejo* (1212) was more particularly designed to define and sanction the prerogatives of the nobility. An edition of this compilation was published by Asso and Manuel[3] in 1771 in their collection which includes, in addition, *El ordenamiento de leyes de Alcalá*, with notes and reports of the Cortes convened in the reigns of Sancho IV and Ferdinand IV. It is also fully treated of in the works of Manrichalar and Manrique in their history of Spanish legislation (*infra*, p. 38).

The *Fuero viejo* was followed by the important code which Alfonso X issued in 1254, known commonly as the *Fuero Real*. This was an example of the unitive tendency manifested at different times. The code, which became a model, was based on all the fueros and especially the *Fuero juzgo*, with modifications, embracing, in four books, political, procedural, civil, criminal and commercial law. The original text was modified by Alfonso X himself in 1278–1279 and by the Cortes of Valladolid in 1293.

There are several editions of this code, although none of any critical value. The leading and most reliable was edited with a commentary in Latin by Díaz de Montalvo in 1500, and another by the Academy of History of Madrid[4] in 1836,

[1] Ureña y Smenjaud, Rafael de. Historia de la literatura jurídica española. Intento de una historia de las ideas jurídicas en España. 2d ed. Madrid, I. Moreno, 1906. 2 v.

[2] *Infra*, p. 37.

[3] Asso y del Ria, Ignacio Jordan de, and Manuel y Rodríguez, Miguel de. El fuero viejo de Castilla . . . y con otros mss . . . Con notas históricas, y legales. Madrid, de Camara de S. M., 1771. 56,143 p.

[4] Opúsculos legales de Rey Don Alfonso el Sabio. Publicados y cotejados con varios codices antiquos por la Real Academia de la Historia. Madrid, Real, 1836. 2 v.

published in their two volume collection of codes. This collection in volume one includes "*El Especulo*, or "Mirror of all the laws", and in volume two, the *Fuero Real* and some other *leyes* of lesser importance. There is also an edition published in the collection of the publishing house of *La Publicidad*.[1] This is a full and complete collection of ancient codes including the *Fuero juzgo*, the *Fuero viejo*, the *Leyes del estilo*, the *Fuero real*, the *Ordenamiento de Alcalá*, the *Siete partidas*, *Espéculo*, *Ordenanza de Castilla*, *Nueva recopilación*, *Novísima recópilación*, *Autos acordados*, and the *Ordenanza de Bilbao*. The text of Díaz de Montalvo[2] was republished in 1781 with references to similar passages in the Partidas. The Latin comment to his edition of 1500 is appended.

Alfonso X promulgated other groups of statutes after the *Fuero real*, e. g. the *Leyes nuevas*, which dealt with only a few topics, such as the relations between Christians and Jews in the matter of loans, civil procedure and inheritance. There was also prepared in 1258, under the command of Alfonso X or on his private initiative a compilation of a legal character analogous to the *Septenario* conceived of and partially prepared by Fernando III, which compilation directly preceded the Partidas and followed the Especulo. The title *Espéculo* (or *Espejo*) or "Mirror of all the laws" was a name much used at the time throughout Europe to designate doctrinal treatises. The *Espéculo* was utilized by lawyers of the time as a text and reference book. The Madrid Academy of History issued an edition of the *Espéculo* in 1836.

The great legal compilation, the *Código de las Siete Partidas* (or the Code of Seven Parts) was begun in 1256 and was completed about 1265. Its preponderant elements were the canon law and Roman law. In fact the general character of the *Partidas* is that of an encyclopedia or systematic compendium of these two legal systems. The redaction of the *Partidas* was the work of several jurists, whose names are not cited in the text, and was done under the supervision of Alfonso, who was himself an author of zeal. This work also

[1] Los códigos españoles, concordados y anotados. Madrid, "La Publicidad," 1847–1851. 12 v.

[2] Díaz de Montalvo, Alonso. El Fuero real de España, por Don Alfonso IX: glosado ad icionado, y concordado con las Siete Partidas y Leyes del Reino. Madrid, Pantaleón Aznar, 1781. 2 v.

bears the name of *Libro de las leyes*. The book is divided into seven general headings, as follows: 1st, The catholic faith; 2nd, emperors, kings; 3rd, justice; 4th, marriage; 5th, contracts; 6th, wills; 7th, criminal law. S. P. Scott of the Comparative Law Bureau has translated this code into English and the Bureau announces that it will soon be published (1914). The best edition for practical purposes and the one used by the courts is that of López,[1] published under royal authority in the years 1829–1831. The edition of 1807, by the Spanish Academy of History[2], is inaccurate for practical purposes, and in a decision of the Supreme Court of March 27, 1860, it was decided that in case of conflict between this edition and that of López, the latter should prevail. A reprint of this work was published in Paris about forty years later. Judge Lobingier recently published in the Annual Bulletin of Comparative Law Bureau, volume 6 (1913), pages 33–50, a brief analysis of this great Spanish law book of the Middle Ages, and in an article in the California Law Review [vol. 1 (1913) pp. 487–498] the same author discussed it and its predecessors.

The *Partidas* did not become the law of the land until nearly a century after its first appearance. But as a direct result of it and of the renewed prestige of Roman law the struggle between Romanism and the native law arose and continued for several centuries. The *Ordenamiento de Alcalá* was published in 1348 by Alfonso XI. It presents, in the order of their authority, the different sources of law, such as the statutes enacted in the Cortes, the *fueros* etc. The *Partidas* was made a supplementary law and was given royal sanction. No edition of the *Ordenamiento* can be recommended. The text as it appears in the collection of Asso and Manuel (*supra*, p. 30) is equal to any, but it is admittedly defective.

The various codes, fueros, and compilations existing at this period of the law caused a great complexity of the positive law, and the resulting confusion and doubt continually led to attempts to determine what was obligatory in any case.

[1] López, Gregoria. Las siete partidas . . . glosadas par . . . Madrid, Leon Amarita, 1829–1831. 4 v.

[2] Las siete partidas . . . cotejadas con varios codices antiguos . . . Par la Real Academia de la Historia. Madrid, Impr. Real, 1807. 3 v. *Same*. Nueva ed. Paris, Castellana, 1846. 2 v.

The changes in the political order during the reign of Ferdinand and Isabella produced a great development of legislation. These rulers attempted to introduce some order into the system of legislation by the publication of the *Ordenamiento real* (1490) and the *Leyes de Toro* (1502). Instead of simplification they only tended to increase the confusion. The first *Ordenamiento* was popularly known as the *Ordenamiento del Doctor Montalvo*, because it was edited by a distinguished jurist, Alfonso Díaz de Montalvo, together with Galindez de Carvajol, under a commission from Queen Isabella. It was a collection of laws, but did not attain legal authority. The last edition of this code was issued in the collection of the publishing house of *La Publicidad* in 1872. The *Leyes de Toro* or the "Laws of Toro" was in no sense a code, but it had as its object to explain and supply defects in existing legislation. It inclined usually to the Roman and canon law in the struggle between Roman law and native law. A commentary on this statute by Llamas [1] appeared in a second edition in 1852. Pacheco's [2] commentary of this law may also be noted.

The spread of the Justinian and canon laws in the lesser kingdoms of the Peninsula, e. g. Aragon, Catalonia, Narvarre, Basque provinces, and Guipuzcoa, marks an important event in the history of the law. These kingdoms, now provinces, began to secure special rights and powers, many of which are yet retained. These form a body of law entitled "*derecho foral*" (*infra*, p. 42), which often discloses conflicts with, and raises obstacles to, attempted current legislation. The abundance of legislation during the period of the absolute monarchy, along with the tendency toward codification in systematic form, caused repeated petitions in Castile for new collections, and in the other kingdoms for the continuation of those already instituted in the preceding period. In the reign of Philip II the *Nueva recopilación* (1567), intended as a general code, was finally promulgated, and furnishes some

[1] Llamas y Molina, Sancho de. Leyes de Toro. Comentario, crítico-jurídico-literal a las leyes de Toro. 2d ed. Madrid, Sánchez, 1852. 600 p.

[2] Pacheco, José F. Comentarios de las leyes de Toro. Madrid, Gello, 1862–1876. 2 v.

guide to the general law of the Kingdom, although it is far from satisfactory. It turned out to be no more than an elaboration of Montalvo's compilation in its identical elements.

The earlier codes retained in the main their authority. Many statutes were enacted and pragmatics and orders were issued by the House of Austria; the greatest in number and importance being those relative to the colonies (*Leyes de Indias*, 1680). The attempts and struggles in Castile for an authentic compilation were reenacted in Aragon, Catalonia, Valencia, and other kingdoms and provinces. This period, known as the "Hapsburg period," was prolific in legal literature.

The house of Bourbon abrogated but little of the Castilian law. No new codes were introduced and only a few institutions of the existing codes were changed. The 1700's constituted a period of great reforms in the social and political life of Spain. In successive and enlarged or revised editions of the *Nueva recopilación* (between 1567 and 1777) there were brought together new royal orders and the important decrees or decisions of the Council of Castile (*Consejo de Castilla*). The Bourbons ended the work of political unification begun by the Austrian house by annulling many of the special laws enjoyed by Catalonia, Majorca, Valencia and Aragon—in each state those regarding the public law (with slight exceptions), and in Valencia those regarding the civil law as well. The colonial statutes relating to industry and public instruction were modernized as were also, in part, those which defined the relations of church and state. The legislative diversity, both as between the different ancient kingdoms of the Peninsula and also within Castile itself, continued particularly in the civil law. The jurists of the eighteenth and early nineteenth centuries proved unequal to the task of fusing all these elements into one code or even into two, one of public and one of private law.

The compilation of laws known as the *Novísima recopilación* (1805) is a chaos of general provisions, applying particularly to Castile, but also affecting the whole of Spain. Within 12 books are mingled provisions governing the Cortes, *fueros*, kings and Council of Castile from the medieval period down to the date of publication. The "*Novísima*" did not satisfy the necessity which it assumed to meet, that is, of concen-

trating the legislative law. There is a six volume edition of the *Novísima recopilación* [1], published in Madrid in 1829.

The ancient codes of Spain were reprinted in full, in a large volume, in 1885, by Martínez Alcubilla.[2] A glossary of ancient legal terms is given. It appears to be the most compact and practical collection.

It is a remarkable feature of the legislation of Spain that at no time was any attempt made to promulgate a new code which would abrogate the old one. Hence, to determine the law on any given subject all the different codes must be examined, with the limitation that the latest in point of time is first in authority. The *Fuero viejo* has been so modified and changed by subsequent enactments that it can no longer be consulted for any useful purpose. All that remains useful of the *Ordenamiento real* and the *Leyes de Toro* has been incorporated into the *Nueva* and, finally, into the *Novísima recopilación.* The *Novísima recopilación* is the latest as well as the highest authority, but when it is silent some diversity of opinion exists as to which of the remaining codes ought to prevail. Some authors give the preference to the *Partidas*, others to the *Fuero juzgo*, or to the *Fuero real*—the general legislation of Spain being found in these four codes or compilations.

In the last century of reform and innovation in Spain, numerous constitutions were adopted and repealed until the adoption of the Constitution of 1876, now in force. Civil, commercial, criminal and military law have all been embodied in separate codes which are complete and are applicable throughout the entire kingdom. A judiciary act and codes of civil and criminal procedure have also been enacted. The most important step in recent Spanish history was the appointment in 1910 of a commission to revise and recodify the civil, penal and procedural codes and the judiciary laws. This commission is composed of nine members under the *ex officio* presidency of the Minister of Grace and Justice and has

[1] Novísima recopilación de las leyes de España, dividida en 12 libros. Madrid, Julian Viana Razola, 1805–1829. 6 v.

[2] Martínez Alcubilla, Marcelo. Códigos antiguos de España . . . desde el Fuero juzgo hasta la Novísima recopilación. Madrid, Administración, 1885. 2,050 p.

been commanded to proceed at once with the task assigned. Nothing of importance, however, has resulted publicly from the four years' existence of this body.

In suggesting and recommending works on legal history, it must be confessed that there is a great inadequacy of historical accounts. Those we have are fragmentary, and are usually either histories of the development of certain institutions followed from text to text through the so-called codes with indication of the changes that these record, or are histories of brief periods of Spanish law.

In 1908 Rafael Altamira, one of the two or three foremost legal historians of Spain, presented an account of the actual state or condition of the works on Spanish legal history to the International Congress of Historical Science. The paper was reprinted in a French magazine, the *Bulletin hispanique*, volume 11 (1909), pages 173–199. The writer criticizes the existing works on legal history, and in addition discusses the teaching of the subject. For English readers by far the best and most concise work on Spanish legal history is the chapter (pages 577–702) on Spain in the first volume of the Continental Legal History Series.[1] This contribution was made by Rafael Altamira. Within the brief space of 125 pages are covered the origin, early growth and development of the various influences on the law down through the nineteenth century, with its great legal reforms.

In 1852 the German publicist Brauchitsch wrote a short history of Spanish law.[2]

There are several treatises in English on the civil law of Spain which give by way of introduction brief sketches of the legal history. Among these may be mentioned Walton's [3] "Civil law in Spain and Spanish America." There is also a

[1] The continental legal history series. Vol. I, Historical survey of the sources, literature and general development of continental law. By R. Altamira, H. Brissaud, H. Brunner, C. Calisse, E. Hertzberg, E. Huber, M. Planiol, R. Stintzing, J. A. Van Hamel, and others. Translated by Rapelje Howell, Francis S. Philbrick, and John H. Wigmore. Boston, Little, Brown and Co., 1912. 754 p.

[2] Brauchitsch, Heinrich von. Geschichte des spanischen rechts. Berlin, Allgemeine deutsche verlagsanstalt, 1852. 203 p.

[3] Walton, Clifford Stevens. The civil law in Spain and Spanish-America. Washington, D. C., Lowdermilk and Co., 1900. 672 p.

somewhat older work by Schmidt[1] of the Louisiana bar which contains an historical introduction to the law and the various codes.

Among the most creditable efforts in legal history is the treatise of Sempere,[2] a writer of authority. The first edition, in 1822, was published under sanction of the Government. This work traces the Spanish law from the earliest sources through the *Novísima recopilación*. The third edition continues the history down to the middle of the nineteenth century. The most reputable general history of law was begun by Hinojosa,[3] the leading authority in the field, but only one volume has been published. Nevertheless, this is an important contribution and covers the period through the Visigothic domination. Hinojosa[4] has also published a one-volume book of studies on the history of Spanish law, which contains among other matters a discussion of the origin of the municipal system in Leon and Castile.

Reference may be made to the historical work of Chapado García[5], which professes to give an account of the "preparation" to the "consummation" of Spanish law, but in fact is of little value. The critics are extremely severe, charging even plagiarism. Altamira[6] in 1903 published a short essay on "preliminary questions" of Spanish legal history.

There are numerous historical accounts of Spanish legislation. An essay by Martínez Marina[7] on the ancient legislation and the principal bodies of laws of Leon and Castile, and

[1] Schmidt, Gustavus. The civil law of Spain and Mexico. New Orleans, La., Thomas Rea, 1851. 376 p.

[2] Sempere, Juan. Historia del derecho español. Continuada hasta nuestros días. 3d, ed. Madrid, Rodríguez de Revera, 1846. 571 p.

[3] Hinojosa, Eduardo de. Historia general del derecho español. Madrid, los Huérfanos, 1887. 378 p.

[4] Hinojosa, Eduardo de. Estudios sobre la historia de derecho español Madrid, los Huérfanos, 1903. 248 p.

[5] Chapado García, Eusebic M. Historia general de derecho español. Valladolid, Jorge Montero, 1900. 971 p.

[6] Altamira y Crevea, Rafael. Historia de derecho español. Cuestiones preliminares. Madrid, V. Suárez, 1903. 220 p.

[7] Martínez Marina, Francisco. Ensayo histórico-crítico sobre la legislación y principales cuerpos legales de los reinos de Leon y Castilla, especialmente sobre el código de las siete partidas. 3d. ed. Madrid, Sociedad, 1845. 574 p.

chiefly of the *Siete partidas*, may especially be noted. An article by Torres y Aguilar, a former professor of the University of Madrid, in volume 6 of the *Journal du droit international privé* (1879), pages 27–40, discusses briefly the different ancient codes and their influence on modern Spanish law, especially the conflict of laws. The most extensive history of Spanish legislation is that of Marichalar y Manrique.[1] It was prepared with special reference to the civil and private law. The first volume, after an historical introduction, begins with the Roman period. In the other volumes the legislation through the reign of Isabel II is discussed. The following states and provinces of the Peninsula still retaining the *foral* or local law are individually covered—Navarre, Aragon, Catalonia, Valencia, Provinces Vascongados, Vizcaya, Guipuzcoa, and Alava—while in addition colonial legislation is discussed. A few other works on Spanish legal history which might have been mentioned have been intentionally omitted because of their inaccuracy or unreliability.

CIVIL CODE

HISTORY

The Spanish civil code was promulgated in the Peninsula by the royal decree of July 24, 1889, and was extended to the colonies on July 31, 1889. It has not proven entirely satisfactory. This is due perhaps to the peculiar conditions created by the concurrent existence of the foral or local law enjoyed by several provinces and the adoption of some French institutions foreign to Spain. It is interesting to note that two eminent foreigners, A. Levé, who translated the code (*infra*, p. 48) and Judge Lobingier ("A Spanish object-lesson in code-making") in volume 16 of the Yale Law Journal, pages 411–416, compliment it highly, whereas severe criticism is levelled against it by the two leading contemporary authorities in Spain, Sánchez Román and Clemente de Diego, in their treatises.

Legislative history.

The history of the code begins with article 259 of the Constitution of Cadiz which lays down at once the principles of

[1] Marichalar, Amalio, and Manrique, Cayetano. História de la legislación y recitaciones del derecho civil de España. Madrid, Nacional, 1861–1872. 9 v.

unification and codification—"A single civil code shall be in force in all the dominions of the Spanish monarchy." The *Cortes* of Cadiz approved in 1811 the resolution of the *Diputado* (Deputy) Espiga to codify the most important branches of the Spanish law. In furtherance of this project a committee of distinguished men was appointed in 1813 to accomplish the work, but the violent reaction of 1814, and the return of Ferdinand VII to the Spanish throne, terminated these preparations. The *Cortes* during the second constitutional régime in 1821 made another attempt to accomplish codification but, owing to the reaction in 1823, it likewise failed.

Private interest kept the enterprise alive, notwithstanding the opposition in official circles, and Pablo Gorosacal became the first to publish a project. Another was later formulated by Manuel Maria Cambronero, which was completed by other jurists in 1836 and officially presented to the *Cortes* in 1839, but no action was taken upon it by the legislative power.

In 1843 by royal decree a code commission, composed of 24 eminent men, was established. The work done by this Commission (1843–1846) was the first officially accomplished toward a civil code (namely, books 1 and 2, and part of book 3). Subsequently a committee of six succeeded to the work, and, in 1851, laid before the government the draft of a complete code, chiefly based upon the Castilian civil law, with the addition of a number of principles taken from the regional laws and others taken from foreign systems, especially from the French. With respect to this draft, attention may be called to the contemporary work of García Goyena,[1] who was the vice president of the General Code Commission and president of the section on the civil code, as it contains a full discussion of the draft code, with an individual treatment of each article.

The committee fixed seven general "bases" for the codification, which was afterwards divided into sections. This project was published, from time to time, to facilitate the examination, study and criticism of the codification and to induce the different tribunals, authorities, societies of lawyers, universities, and persons interested to make suggestions

[1] García Goyena, Florencio. Concordancias, motivos y comentarios del código civil español. Madrid, la Sociedad Tipográfico-Editorial, 1852. 4 v.

and recommendations. The difficulties and prejudices encountered were severe and great, as each section of the Peninsula was unwilling to give up its own legislation. This marks the close of the first epoch in history of the civil code in which the "foral" or local laws were disregarded.

The inauguration of the attempt to harmonize may be called the second historical epoch of the code. After the rejection of the draft above mentioned the ideal reappeared in 1880 with the definite aim of fusing the Castilian civil law with that of the other regions of the Peninsula. To this end there were added to the code commission members representing Aragon, Catalonia, Marjorca, Navarre, Biscay, and Galicia. Nevertheless the draft of a uniform code (or at least one general for the Peninsula) came to nothing. The foral territories clearly manifested their intention to conserve intact their own law without fusion with the Castilian; and, indeed, even to exclude its influence altogether.

It appears that the public authorities were doubtful about the proceedings to be followed in reference to the formation of a code. Therefore, in 1881, the Minister of Grace and Justice, Alonso Martínez, presented to the *Cortes* first a statute embodying the principles of a code ("*Ley de bases*") and afterwards the partial text of one.

His labor was rendered fruitless, however, through political changes. Several years later, in 1885, another Minister of Grace and Justice, Francisco Silvela, presented to the *Cortes* a draft of new "bases" upon which to form a civil code, which was enacted into law May 11, 1888. It is worthy of notice that so much importance was given to the enterprise by the general public that the Royal Academy of Jurisprudence and Legislation convened a judicial congress in which the most important matters of the Spanish civil law were discussed, and certain recommendations made.

By the statute of 1881 introduced by the Minister of Grace and Justice, the government was authorized to publish a code which was to be prepared by the section on civil law of the General Code Commission, and to comprise the Castilian law alone. As regards the "provinces and territories in which there exists a foral law," it was declared that this should be respected "for the time being, in all its integrity, without alteration of their present legal system by the publication of

the code," and that the code in those provinces should be merely "an authority supplementary to gaps that may exist in their special law." The code was accordingly published by royal decree of October 6, 1888, to go into effect sixty days after the *Cortes* had approved it. A royal order was issued February 11, 1889, declaring the code in force May 1, 1889. Some serious defects were observed and a revision ordered. The work was done practically by one man, Azcárate, and the revised edition was ready in two months. This code has been in force since July 24, 1889. It is exceedingly important to notice the fact that the first edition was only in effect from May 1 to July 24, 1889. The code was extended to Cuba, the Philippine Islands, and Porto Rico on July 31, 1899. In 1910 a commission composed of three jurists and the President of the Supreme Court (*Sala de lo civil*) was appointed to revise the civil code but to date nothing has publicly appeared from their work.

In Volume I of his "*Estudios de derecho civil*," Sánchez Román[1] gives an historical account of Spanish legislation with a complete and detailed recital of the preparation and legislative history of the civil code. These "*Estudios*" will be discussed more at length under the general literature of civil law. The public debates[2] in the *Senado* when the bill was under discussion, particularly those of Azcárate, afford interesting reading, as do the articles published in this connection in the press, as, e. g. the anonymous ones that appeared in the newspaper, *La Justicia*. Altamira in his article on Spain in the first volume of the Continental Legal History Series (*supra*, p. 36) presents a terse description of the redaction of the civil code.

The code of 1889 does not satisfy the aspirations for codification, both because of the many gaps which it left and because it left untouched not a few prior laws such as the statutes of civil registry, hypothecary law, waters, mines, hunting and fisheries, etc. The question of the relation of

[1] Sánchez Román, Felipe. Estudios de derecho civil é historia general de la legislación española. 2d ed. Madrid, Sucesores de Rivadeneyra. 1889–1911. 6 v.

[2] Discusión parlamentaria del código civil . . . en el Senado durante . . . 1888 a 1889. Madrid, Góngora, 1890. 832 p.

the non-Castilian legislations (*derecho foral*) and the customary law to the civil code forms at times a perplexing problem.

FORAL SYSTEMS (*Derecho Foral*) AND THE CUSTOMARY LAW

As regards the non-Castilian or foral systems the code is as a rule only supplementary, though there are a few general provisions that are obligatory on these territories. Walton at pages 112 to 115 of the Introduction to his "Civil law in Spain and Spanish-America" (*supra*, p. 36) summarizes the provincial or local laws not abrogated by the civil code, and their order of preference. In article 6 of the "*Ley de bases*," the formulation of appendices of "foral institutions which it is desirable to conserve" was recommended, but nothing has been done officially despite the fact that its preparation was commanded by article 7 of the same statute. That of Aragon is already in writing but awaits revision, and of course has not been promulgated.

The foral law of Aragon may be found in the extensive works of Savall [1] and Parral.[2] The former work is old (1866) but still enjoys recognition. The shorter discussions of Franco y López,[3] to which some additions have lately been made, the work of Blas,[4] and Costa's "Civil liberty" [5] are valuable contributions and carry some authority.

The appendix of Catalonia, prepared by Trias, following the deliberations and labors of the *Academia de derecho* of Barcelona, has been presented to the government, but likewise has not been promulgated. Trias [6] has published some of the results of his investigation in brief form. For researches into

[1] Savall y Dronda, Pascual and Penen y Debesa, Santiago. Fueros, observancias y actos de Corte del Reino de Aragón. Zaragoza, Francisco Castro y Bosque, 1866. 2 v.

[2] Parral y Cristobal, Luis. Aragón y sus fueros. Zaragoza, Mariano Salas, 1907. 2 v.

[3] Franco y López, Luis and Guillen y Carabantes, Felipe. Memoria sobre las instituciones que deben continuar subsistentes del derecho civil aragonés y reformas y adiciones que en ellas es conveniente establecer. Zaragoza, del Hospicio, 1886. 1 v.

[4] Blas y Melendo, Andrés. Derecho civil aragonés. 2d ed. Zaragoza, Cecilio Gasca, 1898. 514 p.

[5] Costa, Joaquin. La libertad civil y el congreso de jurisconsultos aragoneses. Madrid, Rev. de legislación, 1883. 536 p.

[6] Trias, Juan de Dios. Conferencias de derecho civil de Cataluña. Barcelona, la Hormiga de Oro, 1899. 191 p.

the Catalan law the best works are Durán y Bas's "*Memoria*" [1] and Brocá and Amell's "Institutions of the civil law of Catalonia." [2] Coroleu and Pella's [3] work, the *Fueros* of Catalonia, may also be mentioned.

The appendices for the other foral territories have not even been redacted, although the elements for their formulation are to be found in the works of Morales [4] for Navarre; Pipoll [5] for the Balearic Islands; Lecanda [6] for Biscay; and López de Lago [7] for Galicia. The texts and full discussions of the laws of Navarre are to be found in the collection by Casteyón [8] in two volumes, and a briefer work on the general *fuero* of Navarre by Narregui and Lopuerta [9] in 1869. A useful work despite its age is the dictionary by Yanguas [10] of the foral laws promulgated in Navarre previous to 1818. An old but valuable collection [11] of the *fueros* and privileges of Biscay in Bilboa during the reign of Charles IV is still referred to.

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[1] Durán y Bas, Manuel. Memoria acerca de las instituciones del derecho civil de Cataluña escrita con arreglo a lo dispuesto en el r. d. de 2 de febrero de 1880. Barcelona, Casa de Caridad, 1883. 406 p.

[2] Brocá Guillermo and Amell, Juan. Instituciones del derecho civil catalán vigente. Barcelona, Barcelonesa, 2d ed. 1886. 2 v.

[3] Coroleu, José and Pella y Forgas, José. Los fueros de Cataluña. Barcelona, Administración, 1878. 770 p.

[4] Morales y Gómez, Antonio. Memoria que comprende los principios é instituciones del derecho civil de Navarra, que deben quedar subsistentes como excepción del código general, y los que pueden desaparecer viniendo á la unificación decretada con arreglo al real decreto de 2 de febrero de 1880. Pamploma, Provincial, 1884. 295 p.

[5] Pipoll y Palou, Pedro. Memoria sobre las instituciones del derecho civil de las Baleares, escrita con arreglo a lo disquesto en el real decreto de 2 febrero de 1880. Palma, Casa de Misericordia, 1885. 55 p.

[6] Lecanda y Mendieta Manuel de. Legislación foral de España. Derecho civil vigente en Vizcaya, precido de la memoria sobre las instituciones civiles de aquel país. Madrid, Nuñez, 1888. 272 p.

[7] López de Lago, Rafael. Memoria sobre foros y sociedad gallega, escrita con arreglo a lo dispuesto en el real decreto de 2 de febrero de 1880. Madrid, Min. de Gracia y Justicia, 1885. 53 p.

[8] Casteyón, Francisco J. Legislación foral de Navarra. Madrid, Nuñez, 1888. 2 v.

[9] Narregui, Pablo and Lopuerta, Segundo. Fuero general de Navarra. Pamplona, Provincial, 1869. 192 p.

[10] Yanguas y Miranda, José. Diccionario de los fueros del reino de Navarro y de las leyes vigentes promulgadas hasta los Cortes de los años 1817–18. San Sebastian, Ignacio Ramón Barojos, 1828. 547 p.

[11] Fueros, privilegios, franquezas y libertades del M. N. M. L. señorio de Vizcaya. Don Carlos IV. Bilbao, Viuda de Antonio de Egusquiza, (no date). 383 p.

The best work of a general nature on foral law is that by Barrachina,[1] recently published. The author discusses its relation with the civil code, its effect on the decisions of the Supreme Court, and on the laws of registration and the notarial system, and presents an account of the different foral systems, e. g., Catalonia, Galicia, Aragon, Navarre, Biscay, and the Balearic Islands. The doctrinal treatise of Falcón,[2] covering the civil, and the customary law as well, is consulted frequently. The dictionary of Moutón[3] deals especially with the foral and customary law. Bonel's[4] four-volume edition of the civil code includes concordances with the foral law in force in the various provinces. It is not considered authoritative though frequently used. The collection of legislation by Maura[5] covering Majorca, Biscay and Galicia is authoritative. Another older collection of value covering Castile, Leon, Corona and Navarre by Muñoz[6] may be mentioned.

The code denies all value to customs as opposed to statutes, but it admits the suppletory character of local, though not of general, customs in cases where there are no legal precedents or statutes, because dealing with matters unforeseen by the legislator. It is a well-known fact, however, that customs contrary to the statute-book, alike in questions of civil, administrative, political or other law, continually arise, frequently prevail in practice, and often have general assent. This force of the customary law is discussed in chapter 4, numbers 1–8 of Altamira's *Cuestiones preliminares* (*supra*, p. 37).

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[1] Barrachina y Pastor, Federico. Derecho foral español. Castellón, J. Armengotthejos, 1911–1912. 3 v.

[2] Falcón, Modesto. Exposición doctrinal del derecho civil español, común y foral. 6th ed. Barcelona, La Publicidad, Tobella, Costa y Piñol, 1902. 4 v.

[3] Moutón Ocampo, Luis. Diccionario del derecho civil foral, compilado y consuetudinario. Madrid, P. Apalategui, 1904. 4 v.

[4] Bonel y Sánchez, Leon. Código civil español, concordado y domentado con el derecho foral vigente en Cataluña, Aragón, Navarra, y demás territorias aforadas. Con la jurisprudencia, etc. Barcelona, López Robert, 1890. 4 v.

[5] Maura y Montaner, Antonio. Legislación foral de España. Mallorca, Vizcaya y Galicia. Madrid, Nuñez, 1888. 3 v. in 1.

[6] Muñoz y Romero, Tomás. Colección de fueros municipales y cartas pueblas—Castilla, Leon, Corona y Navarra. Madrid, J. M. Alonso, 1847. 3 v.

It must be noted that the actual civil legislation, which includes statutes and the foral legislations, does not comprise all the positive civil law of Spain, but that local and general customs molded to new conditions play an important part. Of course, it often happens that the customary law has been reproduced in the written legislation. On customary law the investigations of Costa have probably been the most thorough. In 1902 he published his "*derecho consuetudinario*" [1] of Spain, with the assistance of such eminent jurists and authors as Méntez, Altamira, López, Moran and others. Moutón's [2] brief treatise on customary law discusses the law as it prevails in other continental countries as well as in Spain.

In Catalonia jurists are at present giving much attention to the customary law and to the question of how much weight it should be given in practice. A leading work on this topic is that of Forroella [3], but unfortunately it was written in the Catalan dialect. Probably in all of the Spanish legal works customary laws are at times mentioned and referred to. Of especial interest is the article, *El método positivo* of Altamira, appearing in the 1892 volume of the journal *La nueva ciencia jurídica.*

The Supreme Court at Madrid passes in the last instance upon appeals from the whole of Spain, thus causing the influence of Castilian law to be felt throughout the Peninsula. The doctrines of these decisions are having some harmonizing effect in the conflict of the code with the foral law.

CONTENTS

The Spanish civil code is divided into four books, together with a short preliminary title, which sets forth the jurisdic-

[1] Costa, Joaquin. Derecho consuetudinario y economía popular de España. Tomo I (Alto Aragón, 2 d. ed. aumentada) por J. Costa, Tomo II (Zamora, Vizcaya, Asturias, Ciudad Real, Alicante, Leon, Jaen, Burgos, etc.) por J. Costa, S. Méntez, M. Unamuno, M. Pedregal, J. M. Piernas Hurtado, P. Soriano, R. Altamira, J. A. López de la Osa, J. Serrano, V. Santamaría, E. López Moran y G. González de Linares. Barcelona, Manuel Soler, 1902. 2 v.

[2] Moutón y Ocampo, Luis. Derecho consuetudinario español y europeo. Madrid, "La Editora," 1911. 447 p.

[3] Forroella y Bastons, Juan Bta. Lo droit civil gironi. Mataro, Felicia Horta, 1899. 124 p.

tion and effect of the laws, and certain general rules for their application, with a few rules on the conflict of laws.

Book one deals with the law of persons and is divided into twelve titles or sections. Title I defines who are Spaniards and who are foreigners, and gives the methods of naturalization. General laws for foreign and domestic corporations and associations are included. Title II deals with the origin and extinction of civil personality, and is itself divided into two chapters, one dealing with natural, and the other with juridical persons, or corporations and associations. Title III deals with domicil, and title IV with marriage, e. g. the forms of contracting, rights and obligations, and divorces, title V covers paternity and filiation, title VI defines the support required for relations, and title VII deals with the paternal power and its effect on the person and property of the children, and includes adoption. In title VIII the results and effects of absence are shown. Title IX covers guardianship and titles X, XI, and XII deal respectively with the family council, emancipation and majority, and the registry of civil status. It may be stated that the family council is one of the remarkable adoptions of foreign institutions by the code which have often not unjustly incurred the criticism of the profession.

Book two takes up the laws of property, ownership and its modifications, and is divided into eight titles or sections. Title I classifies property into real and personal, and divides it into things pertaining to the public domain and private ownership. Title II deals with ownership, rights of accession and rules for boundary lines. Title III treats of the obligations and rights of joint owners. In title IV some special forms of property are dealt with, such as waters, use of private and public waters, mineral ores, and intellectual property. In title V the laws of possession, its acquisition and effect are covered. Usufruct, use and habitation, easements and servitudes, and registration of property are covered in titles VI, VII, and VIII, successively.

Book three, which deals with the different ways of acquiring ownership, is divided into three titles or sections. They treat of adverse possession and acquisition of property which has had no former owner, donations or gifts, and successions. Successions are subdivided into testamentary and intestate.

Book four is the longest and deals with obligations and contracts, divided into 18 subheads or titles. Title I, on "obligations", discusses the general nature, extinction and the evidence admissible in the proof of obligations. Title II is headed "contracts", and all the other sections are really parts of this. The essentials of a contract, contracts relating to property on account of marriage, parapherna, conjugal community, contracts of purchase and sale, barter or exchange, contracts of lease, rents, partnership, agency, loans, deposit, aleatory contracts, compromises, security, contracts of pledge, mortgage, quasi-contracts, concurrence and preference of credits, (civil law institutions) and prescription (both of ownership and of actions) are all dealt with in the order mentioned.

The code ends with a section of provisions for its applications to actions and rights acquired previously to its adoption and also provides for a revision of the code every ten years, a provision which has not been carried out.

GENERAL LITERATURE

There have been two translations of the civil code into English and one into French. By royal decree, July 31, 1889, the code was extended to the islands of Cuba, Porto Rico, and the Philippines, to go into effect twenty days thereafter. The administration of these islands by the United States following the close of the Spanish-American War in 1898 required the translation of this code into English. In 1899 a translation without annotations or notes was prepared by Walton and De Leon.[1] Walton republished this translation in 1900 in his "Civil law of Spain and Spanish America," (*supra*, p. 36) with citations to the laws on which the different chapters and subjects are based, and to some Spanish-American civil codes under the corresponding articles. The War Department of the United States issued a translation[2] in 1899 of the Spanish code in force in the new American possessions. This translation may also be

[1] Walton, Clifford S., and Ponce de Leon, Nestor. The Spanish civil code, translated. Havana, La propaganda literaria, 1899. 368 p.

[2] Division of Customs and Insular Affairs. War Department. Translation of the civil code in force in Cuba, Porto Rico and the Philippines, with alphabetical index. Washington, Government Printing Office, 1899. 322 p.

found in the last volume of the "Laws, ordinances, etc., effective in Porto Rico May 1, 1900." [1] This work includes translations of the civil, penal and commercial codes, the codes of criminal and civil procedure, the mortgage law, public service law, etc. These are all useful to the student of Spanish law, in view of their practical identity with the laws of Spain. The translations are too literal to be considered good. A French translation [2] of the civil code has been made by A. Levé, a second edition of which appeared in 1904. There is a general discussion of the code in the introduction, and the different sections are annotated with reference to corresponding sections in the French and other foreign codes.

Spanish editions of the civil code vary in size and manner of treatment. The editorial staff of the *Revista de los tribunales* publishes new editions of the code from time to time in handy and convenient form. Their latest edition [3] appeared in 1912. García Moreno [4] recently (1913) published an edition of the code as in force in Spain and Cuba. The amendments and additions with judicial decisions in both Spain and Cuba up to 1913 are inserted as annotations. Attention may also be called to the "reference manual" of Spanish law by Medina and Marañón,[5] which is used currently by the profession. This small volume contains the civil and commercial codes, the mortgage law, the law of civil procedure, the Constitution of 1876 and the principal legislation through 1911. Martínez Alcubilla,[6] whose *Diccionario* (*supra*, p. 16) is the standard encyclopedia of Spanish law has re-

[1] Division of Customs and Insular Affairs. War Department. Laws, ordinances, decrees, and military orders having the force of law, effective in Porto Rico, May 1, 1900. Washington, Government Printing Office, 1909. 4 v.

[2] Levé, A. Code civil espagnol, traduit et annoté. 2d ed. Paris, A. Pedone, 1904. 354 p.

[3] Código civil español, cuidadosamente revisado. Madrid, Góngora, 1912. 404 p.

[4] García Moreno, A. Código civil vigente en España y Cuba, con varias leyes y otras disposiciones complementarias . . . 3d ed. Madrid, Artística española, 1914. 821 p.

[5] Medina, León y Marañón, Manuel. Leyes civiles de España conformas á los textos oficiales. Novísima ed. Madrid, Los Hijos de Tello, 1911. 1422 p.

[6] Martínez Alcubilla, J. Código civil. Madrid, Administración, 1913. 1171 p.

cently (1913) published a most complete edition of the code with numerous citations to his large work. It is in fact a digest of references to civil law included in his encyclopedia, which has grown cumbersome by many additional supplements.

The provision in the code for complete revisions every 10 years has resulted in but slight changes and those usually in minor details. There have been numerous legislative enactments and many court decisions relating to the individual sections of the code. In these matters, Calvo [1] has furnished an exceedingly useful aid to the study of the code. His work, which appeared in 1912, is an index of all the relevant legislation and court decisions chronologically arranged under each section of the code. References are made to the *Gaceta* (*supra*, p. 11) and Martínez Alcubilla's monumental encyclopedia (*supra*, p. 16), where the texts of statutes and decisions may be found.

There are two standard commentaries (*comentarios*) on the civil code, possibly of equal value. Manresa,[2] a justice of the Supreme Court and a member of the Code Commission, has published a 12 volume edition with the collaboration of various lawyers. Scaevola's "Civil code" [3] is an even more extensive commentary. It embraces 24 volumes and 2 supplements, the latter dealing with certain special topics. The period of publication covered the years 1902–1909, and there is now in preparation a new edition, of which nine volumes have appeared. A part of book IV of the code has never been covered by the original work.

A scientific and thorough criticism of the code is the "*La revision*" by Comas,[4] who is a professor and former dean of the faculty of law in the University of Madrid, as well as a member

[1] Calvo y Camina, Pedro. Legislación y jurisprudencia relativas al código civil. Madrid, Hijos de Reus, 1912. 568 p.

[2] Manresa y Navarro, José María. Comentarios al código civil español. Madrid, Rev. de legislación, 1903–1907. 12 v.

[3] Scaevola, Q. Mucius. Código civil concordado y comentado extensamente con arreglo á la edición oficial. Madrid, Obras de Mucius Scaevola, [etc.] 1902–1909. 24 vols. and 2 suppl.

[4] Comas, Augusto. La revisión del código civil español. Madrid, Huérfanos, 1895–1902. 6 v.

of the General Code Commission. He discusses the necessity of a reformation of the code and takes up each section individually. A "*proyecto de reforma*"[1] or a proposed model is submitted by the author.

A few treatises in English on Spanish civil law have been published, both before and after the adoption of the code of 1889. An Englishman, Lewis F. C. Johnston,[2] in 1825, made a translation, with copious notes, of the "Institutes of the civil law of Spain" (6th ed., 1805) by Asso and Manuel. The translation was prepared for the benefit of English lawyers, upon the acquisition of the island of Trinidad by England. The work is divided into three books which treat respectively of persons, things (including crimes and punishments) and actions (civil and criminal). It contains the substance of the statute and common law of Spain at that date. In 1851 Schmidt published in New Orleans a treatise on the civil law of Spain and Mexico (*supra*, p. 37). The work is arranged on the principles of the Spanish codes in force in 1851, with notes and references. Walton's "Civil law in Spain and Spanish America" has already been mentioned (*supra*, p. 36). This work is useful to English-speaking people because of the lack of English works on Spanish law, but the author is not always accurate. Its contents include a translation of the civil code and its amendments, short sketches of the codes of civil and criminal procedure, an outline of the law of mortgages and also a translation of the constitutions of Cuba and Mexico in force in 1900.

A two-volume elementary treatise on Spanish civil law, published in French by Ernest Lehr,[3] warrants mention. The first volume appeared in 1880, before the adoption of the Code of 1889, and the second volume in 1890.

Spanish treatises on the civil law vary greatly in size and importance. The leading work is the *Estudios* of Sánchez Román,[4] a professor in the University of Madrid

[1] Comas, Augusto. Proyecto de reforma del código civil español. Madrid, Huérfanos, 1895, 1900. 2 v.

[2] Johnston, Lewis F. C. Institutes of the civil law of Spain by Ignatius Jordan de Asso y Del Rio and Miguel de Manuel y Rodríguez (6th ed., Madrid, 1805). Translated from the Spanish with notes, an appendix, and index. London, A. Strahan, 1825. 535 p.

[3] Lehr, Ernest. Eléments de droit civil espagnol. Paris, L. Larose et Forcel, 1880, 1890. 2 v.

[4] *Supra*, p. 41.

and a member of the Code Commission. The first volume contains a valuable general history of Spanish legislation. In separate volumes, the common and foral laws, the law of property, contracts, family relations and succession are taken up. The "notes" (*apuntes*) of Prof. Clemente de Diego,[1] also of the University of Madrid, and director of the periodical *Revista de derecho privado*, are to some extent superseding as a treatise the work of Sánchez Román and enjoy considerable authority. Unfortunately its value was lessened by the form of its appearance, but in this year (1914) a new edition in readable type is in course of publication. Burón[2] has published a work on the civil law combined with a project of reformation of the code. Prof. Calabuig,[3] of the University of Valencia, in 1912, published the first volume of his "Studies" on the civil law of Spain. The part already in print is complete in itself, being a general discussion of the conception, the theory, and the essential elements of civil law. The *parte especial*, or part dealing in detail with the institutions of civil law, is now in preparation. Valverde[4] is at present (1914) publishing a treatise on the civil law, three volumes of which appeared in 1913.

There are two important annotated editions of the decisions on the civil code which may be mentioned. Mucius Scaevola,[5] who produced the voluminous commentary on the civil code, edited a set of the reports from 1889 to 1901 in seven volumes, arranged in accordance with the civil code. Annual supplements extend the work to 1908. Volumes bringing the decision down to date are in course of publication. A convenient edition of the decisions on the civil code, followed by four indices for easy consultation, has been compiled by a

[1] Clemente de Diego, Felipe. Apuntes de derecho civil. Madrid, V. Suarez, 1914. 8 v.

[2] Burón y Garcia, Gregorio. Derecho civil español según los principios, los códigos y leyes precedentes y la reforma del código civil. Valladolid, Audrés Martin, 1898–1900. 3 v.

[3] Calabuig y Carra, Vicente. Estudios sobre el derecho civil español. Parte general. Valencia, Hijos de F. Vines Mora, 1912. 483 p.

[4] Valverde y Valverde, Calixto. Tratado de derecho civil español. Madrid, Marcías Picanea, 1913. 3 v. to date.

[5] Scaevola, Q. Mucius. Jurisprudencia del código civil. Sentencias y repuestas. Expuesta y comentada. Madrid, Imprint del autor (now published by Ricardo Rojas) 1901–1911. 7 v. and suppl.

jurist who signs his name V. A. M.[1] These reports commence in 1889 and extend to the present day.

INDIVIDUAL PARTS OF THE CODE AND RELATED SUBJECTS

The various divisions of the code have been the subject of individual treatment in a number of important works, to which attention may be called. Several of the larger general works previously cited, especially the treatise of Sánchez Román (*supra*, p. 41), include full treatments of the individual parts of the code.

PERSONS

The code in titles one and two of book I covers explicitly citizenship and naturalization and divides persons into two classes, natural and juridical. The formation and governing laws of corporations and companies are discussed under mercantile law (*infra*, p. 72).

The forms and requirements for the contraction and celebration of marriage were formerly left to the canon or ecclesiastical law, but under the code of 1889 a civil marriage is provided for, with the exception (art. 42) that all who "profess the catholic religion must celebrate the canonical form." A royal decree was issued March 19, 1906, in regard to the secret civil marriage. Emile Stocquart, who has made a study of the Spanish marriage laws, published several interesting articles on the subject. In 1904 he published a description in French of the law of marriage under the early Spanish codes, in volume 36 (1904) of the *Revue de droit international*, pages 585–603. Some years previously he discussed in English the Spanish marriage laws and their extra-territorial effect, in volume 25 (1891) of the American Law Review, pages 82–95. He compared the Spanish and French laws in the third volume (1910) of the Annual Bulletin of the Comparative Law Bureau, pages 25–38. A practical treatise or manual on marriage by Lastres,[2] in his "popular jurisprudence" series, appeared in a

[1] V. A. M. Jurisprudencia referente al código civil glosada, concordada, etc. ... Madrid, Ricardo Rojas (now published by Leopoldo Martínez), 1894–1912. 19 v.

[2] Lastres, Francisco. El matrimonio. 3d ed. adjustada al código civil. Madrid, V. Suarez, 1889. 214 p.

third edition immediately following the promulgation of the code of 1889. Cardenas[1] in volume II, pages 1–117, of his "juridical studies" presents two interesting historical monographs on the effects of marriage on property. An interesting article on the Spanish law concerning breach of promise to marry as compared with American law appeared in volume 43 (1909) of the American Law Review, pages 759–769. It is in fact an opinion by Judge Lobingier in a case in the Philippine Islands.

All positive law relating to women in Spain, with annotations and comments, was compiled by Díez Enríguez[2] in 1903. Books on the legal condition of woman by Ferreiro Lago,[3] and the "married woman and the civil code" by Villar and Martínez Acacio[4] may be mentioned.

In his "popular jurisprudence" series, Lastres has issued treatises on filiation, family relations,[5] and guardianship,[6] which have undergone new revisions in accord with the civil code. The legal condition and social problem of illegitimate children appears to be a more important question in Spain than in America, due to the position the government has taken in supporting bastards. A modern discussion of this question, following the legislation to 1906, was published by Angulo.[7] Infants' contracts, or their capacity to assume legal obligations, is covered in a work by Ramos.[8]

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[1] Cardenas, Francisco. Estudios jurídicos. Madrid, P. Nuñez, 1884. 2 v.

[2] Diéz Enríguez, Dronisio. El derecho positivo de la mujer. Madrid, Góngora, 1903. 380 p.

[3] Ferreiro Lago, R. Condición jurídica de la mujer. Estudios filosófico, histórico y del código civil. Valladolid, Santaren Madrazo, 1902. 108 p.

[4] Villar y Peralta, Luis and Martínez Acacio, José. La mujer casada y el código civil. Madrid, Alonso, 1894. 135 p.

[5] Lastres, Francisco. Filiación. Patria potestad. Alimentos. 2d ed., adjustada al código civil. Madrid, V. Suarez, 1890. 200 p.

[6] Lastres, Francisco. Tutela y consejo de familia. 2d ed., adjustada al código civil. Madrid, V. Suarez, 1890. 201 p.

[7] Angulo y Laguna, Diego. Estudios sobre la condición jurídica de los hijos ilejtíimos según los principios y el código civil vigente. 2d ed. Madrid, Hijos de Reus, 1906. 212 p.

[8] Ramos, Rafael. Capacidad de los menores para contratar y obligarse con arreglo a la legislación vigente. 3d ed. Madrid, Hijos de Reus, 1907. 500 p.

A leading work on guardianship is the commentary by Penichet.[1] The family council, or the *consejo de familia*, is peculiar to civil law countries; there is no exactly similar institution in the United States. It is composed of relations appointed by law (unless provided for by will) who, among other guardianship duties, perform some that fall upon our probate courts. A treatise on this subject by Arce[2] was prepared immediately after the code was adopted. A more modern (1905) work is that of Ribera.[3]

As has been stated, the large general works contain full, and possibly the best, accounts of the individual parts of the code. This is true of the registry of civil status. The laws concerning registration of births, deaths, marriages, etc., are more rigidly enforced in the countries of Europe than they have been up to this time in the United States. The legislation governing the civil register was compiled in 1907 by the editorial house of Góngora.[4] Abella's[5] manual may also be mentioned. The older treatise of Fernández Giner[6] is still of value.

PROPERTY

The law of property in a civil law country such as Spain has many difficulties for the lawyer trained in the common law. In the years 1879 to 1883, Azcárate[7] published a lengthy history of the property law of Europe and its actual status. Laws of mortmain and entailment of estates in Spain are discussed in the brief but valuable work of the present prime

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[1] Penichet y Lugo, Francisco. Comentarios á la tutela. Madrid, Hijos de Reus, 1899. 424 p.

[2] Arce y Rodríguez, Angel de. El consejo de familia, la tutela, y la protutela. Madrid, Fé, 1890. 232 p.

[3] Ribera Cañizares, M. Prontuario del consejo de familia, de la protutela y de la tutela. Madrid, V. Suarez, 1905. 2 v.

[4] Legislación de registro civil desde su creación hasta el día. Madrid, Góngora, 1907. 1 v.

[5] Abella, Fermín. Manual del registro civil. 6th ed. Madrid, Administración de "El Consultor," 1903. 110 p.

[6] Fernández Giner, José. Tratado completo del registro civil. Madrid, Aurelio J. Alaria, 1879. 128 p.

[7] Azcárate, Gumersindo de. Ensayo sobre la historia del derecho de propiedad y su estado actual en Europa. Madrid, Rev. de legislación, 1879–1883. 3 v.

minister, Maura.[1] Antequera[2] has published a treatise upon the disentailment of ecclesiastical lands. The latest manual of civil and ecclesiastical mortmain laws by Aparici[3] appeared nearly fifty years ago. (See also p. 119, *infra*.)

LITERARY AND INDUSTRIAL PROPERTY

The subjects of literary and industrial property (*propiedad literaria y industrial*) received little treatment in the civil code, but are dealt with fully in separate statutes. The earliest recognition of the rights of authors was sanctioned by the decree of Charles III in 1764. The recognition of other kinds of intellectual property, such as paintings, musical and dramatic works, maps, etc., subsequently took place gradually.

In the third volume of the Law Magazine and Review (1877–1878), fourth series, pages 427–459, there was published an article dealing with copyright reform in Belgium, Spain and England. The draft law as presented to the *Cortes* in 1877 is translated into English at pages 442–453. This law was adopted Jan. 10, 1879 and was followed in 1880 by a *reglamento* or regulation for carrying it into effect. Since that date there have been but few additions to or changes in the statute.[4] A good manual of the laws governing literary property, by Soto y Hernández,[5] contains all the legislation and relevant decisions to the date of publication, including the Berne convention of 1886. In the appendix accounts are given of the Society of Spanish authors and the Association of the Press. Another manual of convenient size was published by the law librarian of the University of Madrid, Cas-

[1] Maura y Montaner, Antonio. Propiedad de personas jurídicas. Amortización, vinculación. Madrid, M. H. Hernández, 1897. 46 p.

[2] Antequera, José M. La desamortización eclesiástica considerada en sus diferentes aspectos y relaciones. Madrid, Perez Dubrull, 1885. 510 p.

[3] Aparici y Soriano, Ricardo. Manual novísima de la desamortización civil y ecleciástica. Madrid, Tejado, 1868. 525 p.

[4] Spain has been liberal in granting copyright protection to foreigners. In view of the protection granted to American citizens, the benefits of the United States copyright acts of 1891 and 1909 were extended to Spanish subjects by presidential proclamation of 1895 (renewed in 1902) and 1910.

[5] Soto y Hernández, Antonio. Manual de la propiedad literaria, artística y dramática . . . Madrid, Góngora, 1902. 240 p.

tillo.[1] A bibliography of foreign and Spanish works on the subject is included. A work by a South American, Rios,[2] of special interest to the Latin-American republics, discusses the bases for a treaty between American republics and Spain. The distinguished jurist González Hontoria[3] in 1899 made a collection of the treaties in regard to intellectual property between Spain and Spanish-American countries.

Estasén[4] has published a complete work on the industrial law of Spain in which industrial property is fully covered. The treatise also discusses the labor laws and until 1902 was probably the most useful single work on the subject of industrial law. Since the enactment of the patent and trade-mark law of 1902, however, it has lost some of its usefulness.

The law concerning the protection of industrial property is found in the statute of 1902, *la ley de propiedad industrial de 16 de Mayo de 1902 y su reglamento de 12 de Junio de 1903* (with the royal order of July 26, 1905, explaining article 109 of the law). There were various other statutes enacted prior to this act of 1902 which was the consumation of a complete "code" on the subject, and is now in force. It includes the laws of patents, useful models and designs, trademarks, trade names, unfair competition, and the protection of industrial prizes or honors legally awarded. The act in complete form was translated into French by Carpentier[5] in 1904. This edition is well arranged and conveniently indexed. The same author discussed the law at length in volume 31 of Clunet (1904), pages 832–841. Singer[6] in his work on patents and trade-mark laws of the world devotes pages 396–401 to a discussion of patents and pages 401–403 to trade-mark law

[1] Castillo y Soriano, José del. Manual legislativo de la propiedad literaria y artística. Madrid, M. Romero, 1901. 285 p.

[2] Ríos, Cornelio. De la propiedad literaria; bases para un tratado entre las repúblicas americanas y España, Buenos Aires, J. Peuser, 1905. 1 v.

[3] González Hontoria, Manuel. Los convenios de propiedad intelectual entre España y los paises ibero-americano. Madrid, Minuesa de los Rios, 1899. 38 p.

[4] Estasén, Pedro. Derecho industrial de España. 2d. ed. Barcelona, F. Seiz, 1901. 941. p.

[5] Carpentier, Paul. La loi espagnole sur la propriété industrielle du 16 Mai 1902. Paris, A. Chervalier-Marescq Co., 1904. 136 p.

[6] Singer, Bertholdo. Patent and trade-mark laws of the world. Chicago, Hammond Press (W. B. Conkey and Co.), 1911. 539 p.

in Spain. A translation of the texts of the law is not given. Pella [1] published a useful treatise on patents which he revised in concordance with the act of 1902. The work is intended for the use of inventors and manufacturers as well as lawyers. A more recent practical work by Rossello [2] of Catalonia was published in 1907, giving the court decisions on the subject. The first volume, covering inventions, of Professor Ramella's [3] well-known Italian treatise on industrial property appeared in a Spanish translation in 1913. The work will encompass two volumes when completed.

EMINENT DOMAIN

The third book of the civil code deals with the different methods of acquiring ownership of property. The laws for the taking of private property for public use through the power of eminent domain may be appropriately mentioned at this point. It is interesting to note that the civil code (sec. 349) contains a provision that private property shall not be taken for public use without due compensation—corresponding exactly with our constitutional provision. Article 1456 provides that forcible expropriation on account of public utility shall be governed by the provisions of special laws. The special laws in force are comprised in the act of January 10, 1879, which was followed on June 13, 1879, and March 10, 1881, as is customary in Spanish legislation, by regulations for its application. Article 29 of this act, dealing with the survey of the estate and the appointment of experts, was modified by the statute of July 30, 1904.

The act of 1879 was extended in 1884 to Cuba and Porto Rico. The War Department in its translations of the laws of Porto Rico (*supra*, p. 48) includes this law also, with a complete index. The translation [4] can be obtained separately also.

[1] Pella y Forgas, José. Nuevo tratado de patentes de invención con arreglado a la ley de propiedad industrial de 16 de Mayo 1902 y su reglemento de 12 Junio de 1903. Barcelona, José Espaca, 1904. 235 p.

[2] Rossello, Antonio. La propiedad industrial y leyes que la regulan. Madrid, Hijos de Reus, 1907. 584 p.

[3] Ramella, A. Tratado de la propiedad industrial. Tomo I. Inventos industriales. Madrid, Hijos de Reus, 1913. Vol. 2 in publication.

[4] Division of customs and insular affairs. Translation of the law of eminent domain extended to Cuba and Porto Rico by r. d. of June 13, 1884, and regulation for its application. Washington, Government Printing Office, 1901. 61 p.

Abella's [1] manual of the law of eminent domain was revised in 1911. A treatise by Melgar [2] published in 1889 and a later work by Piernas [3] may be mentioned.

SUCCESSION AND DESCENT

The code devotes considerable space to the matter of descent of property and succession (*sucesiones*). Articles 688 and 732, which deal with holographic instruments, were modified by the act of July 21, 1904. A special institution of the civil law, the compulsory portion, according to which a father or mother can not disinherit the legitimate children, was adopted in Spain. Two-thirds of the estate are thus reserved. La Coste [4] has recently written in French a monograph on the *mejora* or compulsory portion, discussing its history and theory, and comparing it with similar institutions of foreign countries.

Spanish treatises and other works on succession are numerous. The sections of Sánchez Román's treatise devoted to the subject are especially valuable. A practical work is that of Ramos,[5] in which the changes are noted and the decisions of the courts are cited up to 1898, while a more theoretical one is the treatise of López y Gómez.[6] Executors and administrators are discussed in a work published anonymously [7] in 1890. Villalobos López's [8] practical treatise on the distribution of estates may also be mentioned.

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[1] Abella y Blave, Fermín. Manual de expropriación forzosa y obras públicas. 4th ed. Madrid, Administración, 1911. 808 p.

[2] Melgar y Abreu, Barnardino de. Tratado de expropiación forzosa por causa de utilidad pública. Madrid, M. Romero, 1889. 386 p.

[3] Piernas y de Tineo, J. La expropiación forzosa. Legislación española. Madrid, V. Suarez, 1908. 256 p.

[4] La Coste, Georges de. Essai sur les *mejoras* ou avantages légitimaires dans le droit espagnol ancien et moderne. Paris, Arthur Rousseau, 1911. 524 p.

[5] Ramos, Rafael. De las sucesiones. Tratado téorico-práctico según el código civil. Madrid, Rev. de legislación, 1896–1898. 2 v.

[6] López y Gómez, Nicolás. Tratado teórico legal del derecho de sucesión. Valladolid, Pastor, 1891, 1893. 2 v.

[7] Anónimo. Testamentarios y abintestatos. Madrid, Ricardo Alvarez, 1890. 486 p.

[8] Villalobos López, Valerio. Tratado teórico-práctico de particiones de herencia conforme al código civil. 3d ed. Madrid, Hijos de García, 1901. 350 p.

OBLIGATIONS AND CONTRACTS

Book four of the code undertakes to deal fully with the subject of contractual and quasi-contractual obligations. The "general part" of obligations and contracts, which includes the two first titles of the fourth book and chapter II of title XVI of the same book, may also be considered mercantile laws, since their application to questions of this nature is recognized by article 50 of the code of commerce.

Probably the best authority on the law of obligation and contract is the fourth volume of Sánchez Román's *Estudios de derecho civil* (*supra*, p. 41). Clemente de Diego's treatment (*supra*, p. 51) of the subject is considered by many, however, to be of equal value. A Spanish translation of the seventh edition of the "theory of obligations" by the Italian Giorgi [1] was published in nine volumes, in 1911–13, by the editorial staff of the *Revista general de legislación y jurisprudencia*. This voluminous work contains, besides an introduction by Dato, annotations of the laws of Spain and Spanish-America with the decisions of the Supreme Court of Spain. There is an elementary treatise, by Otero,[2] which explains in detail book four of the code.

In addition to the more general works numerous treatments of special topics have appeared. Infants' contracts and obligations are completely discussed by Ramos (*supra*, p. 53). A lucid work on the contractual succession to property by García Herreros [3] warrants mention. A more scientific and profound work is that of Castillejo,[4] which was rewarded with a prize offered by the University of Madrid. The assignment or transfer of obligations has been treated of by Prof. Clemente de Diego [5] in a recent work (1912).

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[1] Giorgi, Jorge. Teoría de las obligaciones en el derecho civil moderno. Translation of 7th ed. Madrid, Rev. de legislación, 1911–1913. 9 v.

[2] Otero y Valentin, Julio. Tratado elemental del derecho de obligaciones según el libro IV del código civil español. Con un prólogo de Lorenzo de Prado y Fernandez. Valladolid, Cuesta é Hijos, 1893. 511 p.

[3] García Herreros, Enrique. La sucesión contractual. Prólogo de Rafael de Ureña. Madrid, Hijos de Hernández, 1902. 149 p.

[4] Castillejo y Duarte, José. La reforma contractual en el derecho de sucesiones. Madrid, Hernández, 1902. 179 p.

[5] Clemente de Diego, F. La transmisibilidad de las obligaciones. Madrid, V. Suarez, 1912. 352 p.

Rents of land or ground rents (*censos*) are treated of in title seven. In Spanish law there are several distinct kinds of rents as the emphyteusis (*censo enfiteusis*), local ground rents (*foros*), the reservative and consignative rents, etc. Sánchez de Ocaña [1] has published a work which enumerates and discusses these fully, treating of their history and the legislative and customary laws affecting them. A manual relating to leases and loans in accordance with the civil and commercial codes was published in 1889 by Abella.[2]

MORTGAGES (HIPOTECAS)

The civil code provides only briefly for the contract of mortgage. In article 1880 it is stated that the "form, extension and effects of the mortgage and also whatever relates to its constitution, modification, and extinction, and all that has not been comprised in the chapter shall remain subject to the provisions of the law of mortgage which continues in force." Therefore it is necessary to examine the legislation separate from the code. Up to 1861, both the laws and decisions on mortgages were conflicting, resulting in much confusion and instability in the value of the mortgage. In 1855, a commission was appointed to frame a general mortgage law to take the place of all the special legislation with its contradictions. Two projects (*proyectos*) were submitted by the commission to the *Cortes* and finally after many revisions a general law was promulgated, February 8, 1861. This law was revised in 1863 and 1865, and finally the law which is practically the one now in force was adopted, December 21, 1869. This law with its regulations of October 28, 1870, went into effect January 1, 1871. It continued in effect as a whole, with a few modifications due to the civil code of 1889, until 1909, when some needed reforms were instituted.

The law of mortgages is composed of fifteen titles, comprising over 400 articles. The instruments requiring record, the method and effects of the record, cancellation of record, kinds

[1] Sánchez de Ocaña, Ramón. Estudio crítico de las diversas especies de censos. Madrid, los Huérfanos, 1892. 166 p.

[2] Abella y Blave, Fermín. Manual de arriendos y préstamos con arreglo á los vigentes códigos civil y de comercio. Madrid, Administración, 1889. 341 p.

of mortgages; the manner of keeping the registries and various other topics are covered. In addition there are rules for the application of the law and a tariff or schedule of fees. The law of 1909 contains six general title heads, subdivided into 43 articles, which extend the business use of mortgage, and change the forms of recording, as well as some provisions concerning ancient entries.

The mortgage law was extended to Porto Rico, Cuba, and the Philippines in 1893. The law there underwent some necessary changes but is in substance similar to the law of Spain. A translation of this law was made by the War Department [1] with the general regulations for its execution. A translation of the general law of 1861 was made by William Grain,[2] an Englishman. A short glossary of Spanish terms used therein is included.

The many works on mortgages indicate the importance of the subject in Spain. An edition of the law as changed by the new reforms of April 21, 1909, was issued in 1910 by the *Revista de legislación.*[3] Vila [4] published in 1913 a well annotated edition of the mortgage law as changed by recent legislation. The work is really a brief commentary. Aragones [5] edited a "compendium" of mortgage legislation in 1911, and also, separately, a brief discussion with the texts of the changes made by the law of 1909. What was generally considered the best commentary on mortgage legislation before the new

[1] Translation of the mortgage laws for Cuba, Puerto Rico and the Philippines. (1893). By United States War Department, Washington, Government Printing Office, 1899. 90 p.

Same. General Regulations for the execution of the mortgage law ... Washington, Government Printing Office, 1899. 152 p.

[2] The *ley hipotecaria* of Spain. Translated and edited by William Grain. ... London, H. Sweet, 1867. 149 p.

[3] Nueva ley hipotecaria, públicada por real decreto de diciembre de 1909 en complimento de la sexta disposición adicional de la ley de 21 de abril del mismo año. Madrid, Rev. de legislación, 1910. 92 p.

[4] Vila Serra, José. Novísima legislación hipotecaria. Valencia, Impr. del autor, 1913. 708 p.

[5] Aragones y Carsi, Pascual. Compendio de legislación hipotecaria. Madrid, V. Suarez, 1909–1911. 2 v.

Same. Modificación de algunos artículos de la ley hipotecaria por la de 22 abril de 1909. Madrid, Góngora, 1909. 135 p.

changes in the law is that of Galindo and Escosura,[1] the fourth edition of which appeared in 1903. It should be noted that the third edition contains the law as enforced in Cuba, Porto Rico and the Philippines with some comments. Another valuable commentary in current use is the work of Martinez Moreda,[2] although it has not been revised since 1906. A recent (1912) work is the "Mortgage legislation" of Diaz Moreno.[3] This work is arranged in form of replies or expositions to the program, or list of topics, for the first examination of applicants for registers of property. It discusses the different topics at some length and includes the law of 1909. The decisions of the Supreme Court from 1861 to December 31, 1900, have been topically arranged in alphabetical order by Ordriozola.[4]

Attention may be called to a few of the more important treatises. A recent (1912) comprehensive work on the subject of mortgage, and also notarial law, in four volumes was published by Barrachina,[5] an eminent jurist. The mortgage act of 1909 is thoroughly discussed. Oliver[6] has written a "fundamental and systematic exposition of the law of mortgage" in force in the Peninsula and the foreign colonies. A work on the law of pledges and securities for loans, with especial reference to agriculturists and farmers, was published by Ramos in 1910.[7] It includes more than the title implies as the author devotes a portion of the work to

[1] Galindo y de Vera, Leon; and Escosura y Escosura, Rafael de la. Comentarios a la legislación hipotecaria de España. 4th ed. Madrid, Antonio Marzo, 1903–1904. 5 v.

[2] Martínez Moreda, M. Comentarios y jurisprudencia a la legislación hipotecaria en forma alfabética. Madrid, Bailly-Balliere e Hijos, 1906. 2 v.

[3] Diaz Moreno, Eustaquio. Legislación hipotecaria. Madrid, A. Marzo, 1911–1912. 2 v.

[4] Odriozola y Grimaud, Carlos de. Diccionario de jurisprudencia hipotecaria de España ... desde el año 1861 hasta 31 de diciembre de 1900. Madrid, Leopoldo Martínez, 1901. 1156 p.

[5] Barrachina, Federico. Derecho hipotecario y notarial. Castellón, J. Armengotthejos, 1910–1912. 4 v.

[6] Oliver y Esteller, Bienvenido. Derecho inmobiliario español. Esposición fundamental y sistemática de la ley hipotecaria. Madrid, Sucesores de Rivadeneyra, 1892–1896. 931 p.

[7] Ramos, Rafael. La prenda agrícola ó hipoteca mobiliaria. Madrid, Rev. de legislación, 1910. 370 p.

discussions of the uncultivated lands and waste lands—of which there is such an immense area in Spain—the lack of farm labor, its causes and effects, etc. Deficiencies in the civil code, so far as it treats of this subject, are exposed and criticized, and at times foreign legislation is drawn upon for comparison.

COMMERCIAL LAW

COMMERCIAL CODE

History

The need of a unitive and general commercial law was imperative, as in civil law, but the realization of a commercial code anticipated that of the civil code. It has been said that Spain has the distinction of producing the first code of mercantile law in the world in her "Ordinances" of the seventeenth century, as in them is combined in the first single body of law every matter of mercantile law applicable to land and sea. The statute that really covered the entire Peninsula for the first time was the "Ordinances of Bilboa," 1737, which also spread to the American colonies. This code remained in force in Mexico even after its independence until the Mexican code of 1884 went into effect. The "Ordinances of Bilboa" was intended as a code for merchants especially.

The modern movement for codification resulted in the code of May 30, 1829, which went into effect on January 1, 1830. This code was practically the work of one jurist, Pedro Sainz de Andino, the secretary of the Commission appointed for its drafting. The necessary reform of procedure in commercial causes was secured by the law of procedure of July 2, 1830. This and the law of December 10, 1831 creating the official exchange of Madrid and regulating contracts for public and commercial securities were also the work of Sainz de Andino, the "author of Spanish commercial law," as he is referred to in history.

Before 1868 the text of the code of commerce underwent no alteration, although some of its provisions had been repealed, and others modified, by laws of October 28 and November 1, 1837, relating to the purchase of foreign ships for a merchant marine, and to stock companies. Nevertheless, the tremendous industrial and commercial development of Spain during the

middle of the nineteenth century emphasized the necessity for many reforms in the code. By the laws of December 6, 1868, and July 30, 1874, important changes were made. The code of commerce now in force was promulgated by royal decree of August 22, 1885, and came into force on January 1, 1886. It was extended to Cuba and Porto Rico on January 26, 1886, and to the Philippines in 1888. The Mexican code of 1889, too, is practically a reproduction.

The civil code supplements the commercial code in commercial transactions, and in this connection it may be said that the most important provisions of the civil code are book IV, title I, obligations; title II, contracts; and title XVI, obligations not based upon agreement, or quasi-contracts. These sections of the civil code are translated in the "Commercial laws of the world" (*infra*, 65). Several important supplementary laws have been enacted separately, e. g. the decree of December 21, 1885 for the organization and government of the mercantile register; laws of March 18, 1874, July 14, 1891, and May 13, 1902 in regard to the Bank of Spain; the establishment of the Mortgage Bank of Spain (Dec. 2, 1872), and of chambers of commerce, industry and navigation (Apr. 9, 1886), amended materially June 31, 1901, December 13, 1901, August 30, 1902 and February 24, 1908; the law of maritime mortgage; the law of April 9, 1904 on compositions with creditors in prevention of bankruptcy by companies which are concessionaires of public works; the establishment of clearing houses (Mar. 30, 1905); and several important insurance laws.

Contents

The Commercial Code contains general and special rules relating to mercantile traders, associations, commerce (including maritime commerce), and all commercial transactions. There are other supplementary statutes which must be consulted in many cases. The code is divided into four books embracing 27 titles and 955 articles.

Book one treats of commerce and commercial persons in general, and registry.

Book two deals with contracts which are essentially commercial in character, including mercantile partnership and corporate agreements, their expiration and liquidation, contracts

of banks, railways, and other public service companies, sales, loans, contracts for land carriage, insurance, mercantile guarantees, and, finally, commercial paper.

Book three is devoted to maritime commerce, and contains elaborate provisions in regard to the law of shipping.

Book four contains provisions in regard to suspension of payment or insolvency, (a legal institution introduced by the code), bankruptcy, and prescription or limitation of actions in commercial matters.

General Literature

The commercial laws of Spain are included in the monumental series *Handelsgesetze des Erdballs* [1] which is now being published in English translation. This great undertaking, in which numerous eminent specialists of all nations have collaborated, is a compilation of the commercial laws of the world in three editions or translations, German, French and English. The work contains the commercial, bills of exchange, bankruptcy and maritime laws of all civilized nations, together with commentaries on civil procedure, constitution of the courts, and trade customs in the original languages with translation. The Spanish laws will be found in volume VII of the German edition (also reprinted separately), and in volume XXXII of the American edition.

The commercial code as in force in Cuba, Porto Rico and the Philippines, was translated into English by the War Department [2] in 1899 and was reprinted in the "Laws of Porto Rico" (*supra*, p. 48) in 1909. Attention may again be called to the fact that these translations by the War Department (being very literal) have in many instances proven defective

[1] The commercial laws of the world. American ed. Consulting editor, Sir Thomas Edward Scrutton . . . general editor William Bowstead . . . with a general introduction by Charles Henry Huberich . . . Boston, Boston Book Co., 1911–13. 35 v. (in course of publication).

Same. German edition. Begründer des werkes: Dr. Oskar Borchardt. Berlin, R. v. Decker, 1911–1913. 14 v. (in course of publication).

[2] The code of commerce in force in Cuba, Porto Rico, and the Philippines. Translation by the United States War Department. Washington, Government Printing Office, 1899. 291 p.

and inaccurate. The legislative history of the Spanish code of 1829, with a brief description of its contents, appeared in the English periodical, the Law Magazine, volume 7, pages 158–162, a few years after its promulgation. Foucher[1] translated the code of 1829, with the relevant laws of procedure, into French. The present code of 1885 was translated into French by Henri Prudhomme[2] in 1891. Some amendments to the code have since been enacted. Mr. José A. Espíritu has presented in volume 1, number 1, of the Phillipine law journal, August, 1914, pages 22–42, a detailed outline of the commercial code, indicating the parts of that code which are still in force in the Philippines, and those which have been repealed by subsequent legislation. The articles by title indicate brief concordances and include annotations of recent decisions handed down since the American occupation.

Many editions of the code have been published. Besides the official editions of the Codes of 1829[3] and of 1885[4] and of the Code for the Philippine Islands and other foreign possessions,[5] the *Revista de los tribunales*[6] from time to time publishes private editions, which include the latest legislation and are annotated with the decisions of the Supreme Court. Medina and Marañón's compilation of the civil laws of Spain (*supra*, p. 48) contains the commercial codes and related laws enacted up to 1911. Walton[7] has published a collection of the

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[1] Code de commerce et loi de procédure sur les affaires et causes de commerce d'Espagne. Traduit par Victor Foucher. Rennes, Blin, 1838. 580 p.

[2] Code de commerce espagnol. Traduit et annoté par Henri Prudhomme. Paris, Durand et Pedone-Lauriel, 1891. 343 p.

[3] Código de comercio. Edición oficial. Madrid, Real, 1829. 335 p.

[4] Código de comercio, edición oficial. Madrid, Ministerio de Gracia y Justicia, 1885. 466 p.

[5] Código de comercio para las Islas Filipinos y demás archipiélagos españoles de oceania. Ed. oficial. Madrid, Ministerio de Ultramar, 1888. 299 p.

[6] Código de comercio con las últimas reformas . . . concordado con las leyes civiles, etc. . . . anotado con la jurisprudencia. Por la redacción de la Revista de los tribunales. 12th ed. Madrid, Góngora, 1910. 876 p.

[7] Walton, Clifford S. Leyes comerciales y marítimas de la América-Latina comparadas entre sí y con los códigos de España y las leyes de los Estados Unidos de América. Washington, del Gobierno, 1907. 5 v. (Also London, Hirschfield, 1908. 5 v.)

commercial and maritime laws of Latin-American countries, comparing them with the Spanish commercial code and the relevant laws of the United States. The Spanish code is used as the basis and the complete text, annotated with decisions of the Supreme Court, is set forth.

In addition to the general collections of court reports there is a valuable digest of the judicial decisions relating specifically to commercial law edited by Estasén.[1] Three volumes have appeared, in which are digested the reports for the years 1838–1892, 1892–1902, 1902–1908. In 1911 Pastor[2] published a work on the commercial code annotated by the decisions of the Supreme Court. The compiler gives the reports under a plan designed for rapid research. Barrio[3] brought out in 1910 a collection of the decisions of the Supreme Court construing the commercial code.

The commentaries on the code, while numerous, are not so voluminous as those on the civil code. The editors of the *Revista general de legislación*[4] published in 1886 a two volume commentary, the code being compared with foreign law. García Moreno[5] has issued an edition of the code designed especially for the practicing lawyer (*abogado*). A useful work for students is that of Teófilo.[6]

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[1] Estasén, Pedro. Repertorio de la jurisprudencia mercantil española ó compilación completa . . . de las diversas reglas de jurisprudencia . . . Barcelona, Penella y Bosch, 1894—1903. 2 v.

Same. Repertorio de la jurisprudencia y doctrina mercantil é industrial española ó compilación . . . en forma de prontuario. Madrid, Rev. de legislación, 1911. 314 p.

[2] Pastor y Bustos, F. El código de comercio interpretado por la jurisprudencia del tribunal supremo. Madrid, Rev. de legislación, 1911. 2 v. (Vol. 3 in publication.)

[3] Barrio y Morayto, L. Espíritu de la jurisprudencia española. La del código de comercio. Madrid, "La Editora," 1910. 575 p.

[4] Código de comercio de 1885. Comentado y concordado . . . por la redacción de la Revista general de legislación. Madrid, Rev. de legislación, 1886. 2 v.

[5] García Moreno, Alejo. Código de comercio de 1885 con las reformas hasta 1907 y anotado con la doctrina de los autores y todas las sentencias del tribunal supremo. Madrid, Antonio Marzo, 1902. 577 p.

[6] Teófilo y Doroteo . . . Código de comercio profusamente anotado y precedido de una breve reseña del movimiento mercantil á través de los siglos. Madrid, J. Corrales, 1902. 312 p.

Among the treatises on commercial law, the "*Instituciones*" by Estasén [1] is perhaps the most complete. The work comprises eight volumes and is divided into four main divisions—history, legislation, special industrial law and theory. It is intended for teachers of law and students as well as for courts and practitioners. A work well recommended is the *Curso* or lectures on philosophical, historical and positive commercial law by Alvárez del Manzano.[2] One of its two volumes appeared in a second edition in 1903. This volume is general and is complete in itself. The author's original intention to issue a larger work has been carried out by his participation in the publication of the projected sixteen volume work mentioned below. Another general work is the two volume treatise of Blanco Constans.[3] The author does not confine himself to Spanish law but treats of the subject in general, including the legislation in other countries.

Three well known Spanish jurists,[4] of whom Alvárez del Manzano is one, undertook in 1909 to publish the commercial laws of Spain and the other nations of the world. The whole project is intended to include sixteen volumes, in which the authors plan to cover every phase of the subject. Four volumes have appeared, volume I relating to merchants and commercial transactions, volume II dealing with mercantile registration, volume III with accounting, and volume IV with boards of trade and trade names. Volume V, which will contain general discussions of commercial contracts, mercantile exchanges, stock exchanges, and factors, and volume VI, which will deal with mercantile companies or corporations,

[1] Estasén, Pedro. Instituciones de derecho mercantil. 2d. ed. Madrid, Rev, de legislación, 1907. 8 v.

[2] Alvárez del Manzano y Alvárez Rivera, Faustino. Curso de derecho mercantil filosófico, histórico y vigente (español y extranjero). Parte general. 2d. ed. Madrid, V. Suarez, 1903. 871 p.

[3] Blanco y Constans, Francisco. Estudios elementales de derecho mercantil según la filosofía, la historia y la legislación positiva vigente en España y en las principales naciones de Europa y América. Madrid, La Sucesora de M. Minuesa de los Rios, 1901–1902. 2 v.

[4] Alvárez del Manzano y Alvárez Rivera, Faustino; Bonilia y San Martin, Adolfo; and Miñana y Villagrasa, Emilio. Códigos de comercio españoles y extranjeros . . . comentados, concordados y anotados ó estudios fundamentales de derecho mercantil universal. Madrid, V. Suarez, 1909–1914. 4 v. (Others in course of publication.)

are announced for publication during 1914. The completion of this undertaking, aside from its contribution to the world's legal literature, should be of great practical benefit to all Spanish-speaking countries.

A good handbook of Spanish commercial law is the manual of Benito,[1] an authority on the subject, and the author of the section on Spain in the "Commercial laws of the world" (*supra*, p. 65). The work includes one volume devoted entirely to introductory remarks on commercial law which was published several years in advance of the handbook. Probably the most practical manual on the subject appeared in 1913 from the pen of Miñana,[2] one of the leading modern specialists in this branch of the law. This manual includes the code, supplementary laws, acts, decrees, etc., with annotations.

A brief treatise on Spanish and international commercial law was written by Carreras and González Revilla,[3] the seventh edition of which appeared in 1910. Gual Villalbi's[4] recent (1913) treatise on international commercial law covers the conflict of laws.

MERCANTILE REGISTER.—A mercantile register for individual merchants and companies exists in Spain. It is obligatory for companies and vessels, and practically for merchants in general, to register. Sections 16–32 of the commercial code contain the general rules. The regulations for the organization and government of the mercantile register were approved by royal decree December 21, 1885. An official edition[5] of the statistics of the Register, compiled by the general director, appeared in 1902.

ACTS OF COMMERCE.—Book one goes into much detail concerning acts of commerce, but title IV, section 54, provides

[1] Benito y Endara, Lorenzo. Manual de derecho mercantil. Valencia, Domenech, 1904–1908. 3 v.

[2] Miñana y Villagrasa, Emilio. Código de comercio. Madrid, Hijos de Reus, 1913. 1,166 p.

[3] Carreras y González, Mariano and González Revilla, Leopoldo. Derecho mercantil de España y derecho mercantil internacional. 7th ed. Madrid, los Sucesores de Hernando, 1910. 550 p.

[4] Gual y Villalbi, Pedro. Tratado de derecho mercantil internacional. Madrid, A. Marzo, 1913. 616 p.

[5] Estadística del registro mercantil formada por la dirección general de los registros. . . . Ed. oficial. Madrid, Sucesores de Rivadeneyra, 1901. 120 p.

that in all instances where there is no express provision in the code the common law governs. Zurita Nieto[1] has given, in the first volume of his studies of comparative mercantile legislation, a discussion of mercantile contracts and merchants in general. Lastres[2] has likewise published a brief monograph on commercial transactions. The laws for commercial agents such as factors, brokers and traveling salesmen have been discussed by Benito[3] in a short article on mercantile agency, published separately, and by Estasén[4] in a special work.

The law governing the account current, the contract itself and its effect, is well covered in two treatises on the subject, one by Vallés[5] of Barcelona, and the other by Estasén[6] who cites all the decisions of the Supreme Court in point.

STOCK EXCHANGES

The *bolsas de comercio* or the commercial exchanges are the legally authorized public establishments in which merchants and intermediary agents enter certain kinds of contracts. The code, in sections 64–80, authorizes the creation or establishment of these *bolsas* in cities where they are needed, enumerates the the contracts to be entered into on the exchanges and provides regulations for the conduct of business. It is necessary, however, to consult the *reglamento* or decree for the regulation of the stock exchanges enacted December 31, 1885, to which a few amendments have been made. A market-overt law prevails also for sales in public places and shops. The irrevocability of the draft payable to bearer used in the exchange in cases of theft, robbery or loss is interestingly discussed in

[1] Zurita Nieto, Benito. Los actos de comercio considerados en si mismos y en relación con los comerciantes. (Estudios de legislación mercantil comparada tomo 1°). Madrid, "El trabajo," 1899. 151 p.

[2] Lastres, Francisco. Los actos de comercio y la jurisdicción mercantil. Madrid, M. G. Hernandez, 1888. 20 p.

[3] Benito y Endara, Lorenzo. El mandato mercantil. Barcelona, "El viajante," 1904. Pamphlet.

[4] Estasén, Pedro. El viajante y el representante de comercio según el derecho español. Barcelona, "El viajante," 1904. 1 v.

[5] Vallés y Pujals, José. El contrato de la cuenta corrienta. Barcelona, Guinart y Pujolar, 1906. 308 p.

[6] Estasén, Pedro. De las cuentas corrientes y de los contratos de cuentas corrientes según el derecho español. Madrid, Hijos de Reus, 1910. 211 p.

the work of Maluquer,[1] annotated with the decisions of the Supreme Court. Many works have been published on the law governing the operation of the *bolsas* and related questions. Capdeville [2] in his work covers reliably the practical operation of the "*bolsa*" as employed in Spain and elsewhere, especially in Madrid, Paris, and Brussels. He includes a glossary of the principal words or terms used on the exchange. The eminent specialist Lastres [3] has published a work on the operations on the exchange with special reference to the public securities of brokers and other agents. A new (1914) edition is now in preparation. A history of the *bolsa* is included in the older brief treatise of Montero [4] covering, in addition, commerce in general and mercantile companies.

BANKING LAW

General provisions for the regulation of banking transactions are found under section 175 *et seq.* of the code. The banking system of Spain is based on a national bank, the *Banco de España*, established by royal decree of March 19, 1874. This is the only bank of issue that exists in the nation. This powerful institution is governed by the royal decree that established it; by the law of July 14, 1891; by the law of May 13, 1902, and by its constitution and by-laws approved by royal decree of Dec. 10, 1900, and Jan. 5, 1901. Several collections [5] of the laws and statutes governing the National Bank have been published from time to time, the latest in 1914. A special edition of the review "*Vida Económica*,"

[1] Maluquer y Viladot, Juan. Irreivindicación de efectos al portador en los casos de robo, hurto o extravio. Estudio sobre las bolsas de comercio y sus agentes mediadores. Anotado con la jurisprudencia . . . prólogo de Antonio Maura. Barcelona, Henrich y Ca., 1901. 238 p.

[2] Capdeville, Edmundo. La bolsa al alcance de todos. Las operaciones en las bolsas de Madrid, Paris, Bruselas. Madrid, Nacional y Extranjera, 1905. 198 p.

[3] Lastres, Francisco. Operaciones de bolsa. Contratación sobre efectos públicos de los corredores de comercio ye de los agentes de bolsa. Madrid, V. Suarez, 1878. 344 p.

[4] Montero y Vidal, José. La bolsa, el comercio, y los sociedades mercantiles. 3d ed. Madrid, Huérfanos de la Sagrada Corazón de Jesús, 1883. 262 p.

[5] Banco nacional de España. Leyes, estatutos y reglamento. Madrid, Bernardo Rodríguez, 1911. 167 p. Suppl. 1914.

volume 3 (32 pages), published in April, 1914, gives the history of the National Bank of Spain, texts of relevant laws, and some statistics. A general work on the question of money and bills of exchange was published by Gil [1] in 1906.

The code contains in articles 212–217 special rules for agricultural banks and societies. Noguer [2] has recently (1912) published a practical work on the agricultural cooperative credit associations in Spain, including sections devoted to historical and theoretical discussions. The author also discusses foreign institutions of a similar nature. Ramos,[3] in 1903, issued a treatise on agricultural credit or loans. The work includes discussions of credit societies, the relevant provisions in the commercial code, the mortgage bank, etc.

Credit and loan associations dealing with mortgages on real estate were scarce in Spain prior to 1872. Although their legal existence was recognized by royal decree of January 5, 1869, the few established up to 1872 were more or less unsafe. To remedy the situation the law of December 2, 1872, was enacted, which established the *Banco hipotecario español* or the Mortgage Bank of Spain. This bank enjoys some exclusive privileges and its charter extends for ninety-nine years. The law creating it contains thirty-eight articles providing specific rules for the carrying out of its purposes.

The establishment of clearing houses at Madrid and Barcelona was authorized by royal decree of March 30, 1905.

COMMERCIAL ASSOCIATIONS

The various kinds of corporations and associations of natural persons for business purposes are dealt with in book II of the commercial code. Section 122 enumerates the three general forms recognized by Spanish law: (1) The ordinary unlimited partnership (*la compañía colectiva*); (2) the limited form (*compañía en comandita*) in which one or more persons bring fixed capital into the common fund, to abide by the results of the partnership operations, directed exclusively by

[1] Gil y Pablos, F. Estudios sobre la moneda y los cambios. Madrid, Rev. de legislación, 1906. 383 p.

[2] Noguer, Marciso. Las cajas rurales in España y en el extranjero. Madrid, Administración de Razón y Fe, 1912. 668 p.

[3] Ramos, Rafael. El crédito agrícolo. (Cajas rurales de préstamos.) Madrid, Hijos de Reus, 1903. 2 v.

others in the collective name; (3) the limited form or stock company (*compañía anónima*) which corresponds to our "corporation."

The *compañía en comandita* is in principle the prototype of the limited partnership, unknown to the common law, but now recognized by statute in most of our states. It is similar to the *Kommanditgesellschaft* in German law or the "*commandite*" company of other European countries. It is neither a partnership nor an ordinary stock corporation, as some of the members are liable to creditors to the amount of their shares only and have no voice in the management, whereas the others, the partners, who have exclusive control of the operation of the business, are liable *in solido* as members of an ordinary partnership.

Benito[1] in 1904 prepared a brief lecture or *conferencia* on the different forms which mercantile associations may adopt. A more complete treatise on the subject, including private banks and the national bank, was published in 1907 by Estasén.[2]

RAILROADS AND PUBLIC SERVICE COMPANIES.

The business of carriers and the conveyance of goods and persons by land is largely regulated by sections 349–379 of the commercial code. Sections 184–192 deal with the organization and financial management of railroads and public service companies. The carriage of postal, telegraphic or telephonic correspondence, of declared valuables and of merchandise in postal packets is not mercantile according to the Spanish law, because it constitutes a public service monopolized by the State, the working whereof may be assigned to individuals under certain conditions. These are regulated by numerous statutes enacted from time to time as the service demands.

The important special laws for railways are: the general law of November 23, 1877; the railroad police regulation of the same date; the regulations for the application of both laws dated May 24 and September 8, 1878. This railroad police

[1] Benito y Endara, Lorenzo. Formas que pueden adoptar las sociedades mercantiles. Madrid, Rev. de legislación, 1904. 24 p.

[2] Estasén, Pedro. Tratado de las sociedades mercantiles y demás entidades de carácter comercial según el derecho español. Madrid, Hijos de Reus, 1907. 613 p.

regulation is an extensive law and goes into minute details as to the regulations for the deportment of passengers, tickets, bills of lading, running of trains, etc. The latest important railroad law was passed on March 26, 1908, on secondary railways, followed by the *reglamento* for its application Jan. 14, 1909. Translations have been made by the United States War Department of the railroad law and the railroad police regulation as extended to Cuba,[1] Porto Rico[2] and the Philippines.[3]

There are several collections of railway legislation, often combined with treatises on the subject. The most convenient and complete collection of the railway legislation, including that of street railways, is the work of Moutón[4] published in 1908. This contains the general law of 1877, the police regulation, all the statutes to 1908, and the relevant sections of the code of commerce, etc. Each section is annotated with the court decisions in point. The work of Torino[5] on the railroad legislation, which appeared in 1902, also includes street railways (*tranvías*).

An extensive encyclopedia of the legislation and also of the practical administration of railroads in their legal, technical, administrative, and commercial aspects, the latest edition bearing date 1882, was compiled by Garcés[6] with the collab-

[1] Translation of the law of railroads for the island of Cuba, and regulations for its execution with additions to date (1895). By U. S. War Dept., Washington, Government Printing Office, 1899. 58 p.

[2] Translation of the law of railroads for the island of Porto Rico. Same, Washington, Government Printing Office, 1899. 45 p.

Same. Police law of railroads and regulations for its application promulgated Feb. 17, 1888. Washington, Government Printing Office, 1899. 37 p.

[3] Translation of railroad laws and regulations for the Philippine Islands . . . to Aug. 1900. Washington, Government Printing Office, 1900. 71 p.

Same. Regulation for the execution of the police law of railroads. Washington, Government Printing Office, 1899. 27 p.

[4] Moutón y Ocampo, Luis. Doctrina, legislación y jurisprudencia sobre ferrocarriles y tranvías . . . comentadas, concordadas y anotadas. Madrid, Rev. de legislación, 1908. 559 p.

[5] Torino, José. Legislación de ferrocarriles y tranvías. Concessión y construcción. Madrid, Hijos de J. A. García, 1902. 961 p.

[6] Garcés, Benito Vicente. Diccionario razonado, legislativo y práctico de los ferrocarriles españoles bajo el especto legal técnico, administrativo y comercial de los mismos con la colaboración de José González Alvarez. 2d ed. Madrid, Indicador de los Caminos de Hierro, 1875–1882. 4 v.

oration of González Alvarez. A smaller work of similar nature is the *Diccionario* of González de las Cuevas and Sastre [1] published a few years later. A complete treatise on railway and street railway law decisions has been published by Foyé.[2] The body of the work, in five volumes, was published between 1894 and 1904, and six appendices carry the work through 1910. The organization of railroad companies and their legal character, together with their relations with employees, are treated of in a work by Martin-Gamero.[3]

A manual dealing with the contract of transportation was published by Foyé [4] in 1886. Bravo Moltó [5] in 1891 produced a two volume treatise on the legislation of communication and transportation in general. The laws governing the mail are discussed in a work by Gutiérrez.[6] A history by Verdegay [7] of the *correo* (post) from its origin, with an appendix of legislation of the countries which form the universal postal union, appeared in 1894.

INSURANCE

The commercial code, in sections 380–438, deals fully with the contract of insurance, including life, fire, land transportation, and other kinds of risks. On May 14, 1908, a law was passed for the registration and control of insurance companies. This law has four main titles and some additional

[1] González de las Cuevas, José and Sastre y Rodríguez, F. Diccionario general de ferrocarriles. Públicado bajo la dirección de Fernández del Rincón. Madrid, Minuesa, 1887. 747 p.

[2] Foyé, R. Los caminos de hierra de España. Recopilación ordenada de las disposiciones legales vigentes . . . construcción y explotación, legislación y jurisprudencia. Barcelona, Tasso, 1894–1904. 5 v. (6 app. to 1911)

[3] Martin-Gamero, Andrés. Constitución y organización de las compañías de ferrocarriles y carácter jurídico, condiciones y relaciones de sus empleados. Madrid, los Ferrocarriles, 1891. 306 p.

[4] Foyé, R. Manuel del contrato de transporte. Barcelona, Taso, 1886. 368 p.

[5] Bravo Moltó, Emilio. Legislación de comunicaciones. Madrid, Núñez, 1891. 2 v.

[6] Gutiérrez, Francisco de Asis. Legislación de correos. Madrid, Cuesta, 1893. 214 p.
Same. Madrid, Ambrosio Pérez y Ca., 1902. 207 p.

[7] Verdegay y Fiscowich, Eduardo. Historia del correo . . . con un apendice que comprende la legislación interior de los países que forman la unión postal universal. Madrid, Ricardo Rojas, 1894. 475 p.

provisions for its application, divided as follows: I, General provisions; II, Publicity and guarantees: III, Advisory board and inspection of insurances: IV, Liabilities. A provisional *reglamento* was promulgated by royal decree July 26, 1908 and it was not until February 2, 1912 that a final or definite regulation (*reglamento definitivo*) appeared. This *reglamento* contains 187 sections. The *Ilustración financiera* [1] has printed an edition of the *Reglamento definitivo de seguros* in a small pamphlet of 129 pages. There appear to be very few Spanish treatises on insurance; the works of French and other foreign authors are used to a great extent. Estasén,[2] in 1906, published a small but good general work on all branches of insurance law.

The Workmen's Compensation Act of January 30, 1900, in article 12, authorized employers to transfer their liabilities to injured employees to insurance companies conforming to certain requirements. Companies insuring against risks of accidents to workmen sprang into existence. The royal decree of August 27, 1900 relating to these companies and the *reglamento* of the Workmen's Compensation Act of July 28, 1900 contain the laws governing this branch of insurance.

BILLS AND NOTES

A complete negotiable instruments law is given in the code in sections 443–566. The leading treatise on the subject is the work of Huguet,[3] a second edition of which appeared in 1910. The bill of exchange is especially emphasized, but all forms of negotiable paper are included in the work. Benito [4] published a brief monograph on the subject in 1906.

The *aval* in Spanish law constitutes a document similar to our anomalous indorsement, although it may also be made

[1] Reglamento definitivo de seguros para aplicación de la ley de 14 de mayo de 1908 . . . públicado por r. d. de 2 de febrero de 1912. Madrid, Ilustración financiera, 1912. 129 p.

[2] Estasén, Pedro. Los seguros. 2d ed. Barcelona, F. Granda y Ca., 1906. 300 p.

[3] Huguet y Compañá, Pedro. La letra de cambio y demás documentos mercantiles . . . 2d ed. Barcelona, Sucesores de Manuel Soler, 1910. 527 p.

[4] Benito, Lorenzo. La letra de cambio. Figureas, Mariano Alegret, 1906. 17 p.

restrictive. Estasén[1] in 1902 published an article on this form of commercial transaction.

The cheque or bank check has received individual treatment in the work of Mora[2] published in Havana. This book, which is a prize essay, gives the law of foreign countries as well as of Spain.

MARITIME LAW

Book III of the code deals with maritime commerce, and the whole subject, except the maritime mortgage (*hipoteca naval*), is practically covered. The "Regulation for merchant navigation" promulgated by the Ministry of Marine and approved by royal order of January 1, 1885, is still in force in regard to the physical management of vessels. It is a police regulation.

Title I deals with the vessel and its parts and the sale thereof, voluntarily, by necessity, or judicially. Title II covers the regulations and laws governing all persons who take part in maritime commerce as owners, masters, officers and crew, and supercargoes. Special contracts, e. g., affreightment, bottomry and insurance are treated of in title III. The risks, damages and accidents of maritime commerce including average, calls at a port of refuge, collisions, shipwrecks, etc., are included in title IV. Title V deals with the proof and adjustment of average, both general and particular.

The maritime laws of Spain have been translated into English by F. W. Raikes[3] of London. The work is annotated and includes a translation also of the law of maritime mortgage. The Spanish commercial maritime law has been discussed briefly in French and compared with the law of other continental countries by two writers, Jacobs and Ouwerx.[4]

In 1888, Agacinio[5] published an encyclopedia of the maritime legislation from 1854 to 1888. The first volume of an ency-

[1] Estasén, Pedro. El aval. Ensayo jurídico. Barcelona, F. Granada y Ca., 1902. 44 p.

[2] Mora, Federico. Del cheque. Habana, Gobierna y Capitania general, 1885. 195 p.

[3] Raikes, F. W. The maritime codes of Spain and Portugal. Translation. London, Effingham Wilson, 1896. 212 p.

[4] Jacobs, Victor and Ouwerx, Lambert. La loi espagnole relative au commerce maritime. Bruxelles, F. Larcier, 1886. 138 p.

[5] Agacinio y Martínez, Eugenio. Diccionario de la legislación marítima. Contiene en extracto las disposiciones vigentes . . . desde 1854–1888. Madrid, Infantería de Marina, 1888. 505 p.

clopedia of maritime law including all the legislation, decrees, etc., arranged in alphabetical order, was published in 1908 by Parreño.[1] A good treatise on maritime law is the production of Godínez.[2] A short treatise on towage (*remolque*), assistance and salvage was published in 1911 by Estasén,[3] the author of numerous works on commercial law. In this work he includes the conventions of the international conferences of maritime law at Brussels in 1905 and in 1910.

A manual of the legislation on the merchant marine, by Ruiz,[4] appeared in 1904. The question of marine jurisdiction and the laws applicable to the admiralty courts are discussed in a treatise by Moreno.[5] A manual of the admiralty courts was published by González Maroto and Tapia [6] in 1903.

The maritime mortgage, *hipoteca naval*, is dealt with in a special statute. It has always been treated as distinct from the mortgage of other kinds of property. In 1888, five years before the present statute, Gongález Revilla [7] published a work on the subject, treating comparatively the legislation of other countries. The same author, immediately after the passage of the law of August 21, 1893, issued a convenient manual [8] of the Spanish law, comparing it with foreign law. The treatise of Ayllon [9] on commerce and the naval mortgage

[1] Parreño y López, García. Diccionario de derecho marítimo. Cartagena, Soc. Levantina de ártes gráficas, 1908. v. 1 (A–C). 761, 31 p.

[2] Godínez y Mihura, Manuel. Elementos de derecho marítimo español. Madrid, Infantería de Marina, 1892. 734 p.

[3] Estasén, Pedro. Cuestiones de derecho marítimo. Remolque, asistencia y salvamento. Madrid, Hijos de Reus, 1911. 241 p.

[4] Ruiz y Gil, Cristobal. Manual de legislación del marino mercante. Madrid, Miguel Diaz, 1904. 235 p.

[5] Moreno y Lorenzo, Joaquin. La jurisdicción de marina. Tratado de todas las leyes, etc. de constante aplicación en los tribunales de marina. Madrid, Hijos de F. A. García, 1895. 1016 p.

[6] González Maroto, Fernando, and Tapia y Casanovas, José. Manual de los tribunales de marina. Madrid, Ministerio de Marina, 1903, 536 p.

[7] González Revilla, Leopoldo. La hipoteca naval en España. Estudio de legislación mercantil comparada. Madrid, Infantería de Marina, 1888. 490 p.

[8] González Revilla, Leopoldo. Manual práctico de la hipoteca naval, comentarios y texto de la ley de 21 de agosto de 1893. Madrid, Góngora, 1894. 344 p.

[9] Ayllon y Altolaguirre, Emilio. El comercio y la hipoteca naval. Madrid, Rojas, 1893. 1 v.

also warrants mention. A work relating to the maritime broker which contains the legislation, but is otherwise not very useful, was published in 1913 by Arriaga.[1] A highly recommended treatise on international maratime law by Negrin (*infra*. n. 133) appeared in a second edition in 1888.

CONSULAR LAW

Consular legislation bears a close relation to maritime law, as consuls in foreign ports where Spanish vessels arrive are representatives of the Spanish State for all the purposes of the application of the laws which relate more or less directly to commerce and navigation, an exterritorial privilege which is both granted and limited by treaties. It is, therefore, proper to give an indication of the laws by which the consular body is controlled in these matters. The subject is now governed by the organic law promulgated by royal decree April 27, 1900, which was completed by the law of September 1, 1906. The consular jurisdiction is regulated by the decree of September 29, 1848. In addition to these there are provisions in the commercial and civil codes and many decrees and orders of lesser importance. The most recent and useful work on the subject is that by Maluquer[2] which, with two appendices, brings the law down to 1908. A third appendix is now (1914) in course of publication.

BANKRUPTCY

The Spanish law of suspension of payment and bankruptcy is given in book four, title I, of the commercial code, as amended by the law of June 10, 1897. This law drafted anew sections 870–873, inclusive, on suspension of payment, or insolvency, and its effects. The divisions or sections of the code cover: I, suspension of payment and its effects;—II, general bankruptcy provisions;—III, the kinds of bankruptcy and the rules governing creditors and persons colluding or aiding in fraudulent bankruptcies;—IV, composition of bankrupts with their creditors;—V, rights of creditors and their clasification;—VI, discharge of the bankrupt;—VII, general provisions relating to the bankruptcy of mercantile

[1] Arriaga, Emiliano de. El libro de la correduría marítima. Bilboa, Lerchundi, 1913. 360 p.

[2] Maluquer y Salvador, Miguel. Derecho consular español. Madrid, Hijos de Reus, 1908. 900 p. and 2 app.

societies in general;—VIII, suspension of payment, bankruptcies of companies, and undertakings for railroads and other public works. The arrangements with creditors by companies which are concessionaires of public works are governed by the law of April 9, 1904.

It is important to notice that suspension of payment is a legal institution distinct from bankruptcy. It was first established by the commercial code. A solvent merchant who is in possession of sufficient assets to meet all his debts, but foresees the impossibility of doing so on their respective due dates, may place himself in a state of "suspension of payment" on regular application. Thus a merchant is allowed to satisfy his debts before the danger of being thrown into bankruptcy confronts him.

The rules of procedure in bankruptcy matters are included in sections 1318–1396 of the code of civil procedure. In the volume on Spain of the "Commercial laws of the world" (*supra*, p. 65), American edition, these rules are elaborated and explained (pp. 71–83). In the case of suspensions of payment, there are no special rules of procedure either in the code of civil procedure of 1881 or in any other law, except that which relates to the arrangement with the creditors of the bankrupt. Thus it is that procedure in these matters is governed by what the judges in the trial and appellate courts determine in each case in accordance with their knowledge and understanding. In sections 870–873 a "special" law for procedure in suspension cases is referred to, but no such law has yet been enacted.

There are several good works dealing with the subject of bankruptcy. The treatise of Estasén[1] contains a valuable historical introduction of 136 pages and also a bibliography of Spanish and foreign works dealing exclusively with suspension of payment and bankruptcy. The second edition carries the work to 1909. Another work to be recommended is the commentary of Nogués and Martorell[2] on book four of the

[1] Estasén, Pedro. Tratado de las suspensiones de pagos y de las quiebras. Estudio teórico-práctico . . . 2d ed. Madrid, Hijos de Reus, 1909. 670 p.

[2] Nogués, Emilio José María, and Martorell y Rovira de Casellas, Luis. Quiebras y suspensiones de pagos. Comentarios al libro del código de comercio concordado y comparado . . . legislación . . . de Europa. 3d ed. corr. con arr. á la ley de 10 de junio de 1897. Madrid, La Propaganda universal, 1897. 605 p.

code of commerce. It is a practical survey of the entire Spanish law on the subject and draws comparisons with the laws of other European countries. A two volume work on the theory and practice of the law governing the meeting of creditors and bankruptcy was produced in 1904 by Rives,[1] with an introduction by Manresa. A handbook of procedure in bankruptcy, covering other nations as well as Spain, was published in 1898 by Redondo.[2]

Some of the provisions in the code of commerce, especially in regard to suspension of payment, proved highly unsatisfactory. This caused numerous criticisms until the law of June 10, 1897, made several amendments. A commission, previous to 1897, had been named by the National Commercial Congress for the purpose of revising the above sections of the code. The *dictamen* presented by Lastres[3] before the Commission in 1893 is of interest in the study of this branch of the subject.

LIMITATION OF ACTIONS

Limitations of actions or *prescripciones* for contracts and claims, both *ex delicto* and *ex contractu*, arising in mercantile transactions, are set forth in articles 942–955, under two titles of book four.

COMMERCIAL COURTS

Prior to 1829 commercial causes were generally heard before consuls and not in the regular civil courts. By the code of 1829 the consular jurisdiction disappeared and was replaced by the Tribunals of Commerce (likewise composed of consuls) which had to try mercantile causes as provided in article 1178 of the code. Where there was no Tribunal of Commerce the mercantile jurisdiction was entrusted to ordinary judges.

[1] Rives y Martí, Francisco de P. Teoría y práctica de actuaciones judiciales en materia de concurso de acreedores y quiebras, con sus preliminares quita y esperay suspensión de pagos. 2d ed. Madrid, Fortanet, 1904. 2 v.

[2] Redondo, Remigio Antón. Quiebras. Manual sobre el precedimiento en los juicios universales de quiebras. Madrid, Sucesores de Alba, 1896. 141 p. (with charts and forms.)

[3] Lastres, Francisco. Dictamen de la comisión nombrada por el congreso para informar la proposición de ley relativa á suspensión de pagos y quiebras presentada por . . . Madrid, Hijos de J. A. García, 1893. 40 p.

By royal decree of February 7, 1831, commercial courts were established at all the important cities of the Peninsula. These new courts did not give the results expected of them and many abuses were committed under their rule. They were abolished by the law of December 6–8, 1868. From that date there has been no difference between the ordinary and commercial jurisdiction in Spain, except in certain provisions of the law of procedure applying only to mercantile questions. Their reestablishment, however, is a live question at present. Lorenzo Benito,[1] in an article published in 1905, asserts that the agitation in their favor is merely a protest against the defects in the administration of justice which are felt quickly when they affect mercantile interests. Gómez Chaix[2] in 1892 published some notes or *apuntes* on the commercial courts and their establishment in Spain. The reestablishment of the courts has been debated considerably in the National Commercial Congress, a private organization. Arguments on both sides are printed in the reports of the congresses[3] of 1881 and 1886, and of the *Congreso jurídico español* of 1886.[4]

CHAMBERS OF COMMERCE

On the initiative of Eduardo Perez Pujol, a professor in the University of Valencia, there was created in Spain by royal decree of April 9, 1886, an institution called "Chambers (*Cámaras*) of commerce, industry and navigation." This institution is a permanent organization with separate associations in the different cities, and in foreign ports where there are a sufficient number of Spaniards engaged in mercantile pursuits to warrant them. Its purpose is to recommend, or petition for, changes in the laws, encourage commerce, settle labor disputes when chosen as arbitrators, etc. The

[1] Benito, Lorenzo. Los tribunales de comercio. Barcelona, "El viajante," 1905. 32 p.

[2] Gómez Chaix, Pedro. Apuntes acerca de los tribunales de comercio y su establecimiento en España. Malaga, Poch y Creixell, 1892. 148 p.

[3] Actas del congreso nacional mercantil de noviembre-diciembre de 1881. Tema 2d. Madrid, El porvenir liberario, 1882. 381 p.

Same. De mayo de 1886 Tema 5° and 1882 Madrid, El porvenir liberario, 1887. 1 v.

[4] Actas del congreso jurídico español de 1886. Tema 12th. Madrid, El porvenir liberario, 1886. 1 v.

"Chambers" by law must necessarily be consulted on proposed treaties, the regulation of rates, public labor contracts and on reforms of the code of commerce and mercantile procedure. It is in the nature of a board of trade with some of the powers of our Interstate Commerce Commission. The laws which now regulate the Chambers of Commerce are the act of June 29, 1911, and the decree of December 29, 1911. For a discussion of these *cámaras* a brief monograph or lecture by Benito,[1] published in 1899, is suggested.

COMMERCIAL TREATIES

Treaties have little effect upon the commercial rights of foreigners because, by virtue of the provisions of article 14 of the present commercial code, foreigners in Spain may carry on commerce like subjects themselves, without any special limitations or conditions. Besides this, Spain has given her adherence to the Universal Conventions on Posts, Telegraphs and the Protection of Trade Marks and Patents. The modern commercial treaties of Spain may be found in the extensive collection of Spanish treaties by Olivart (*infra*, p. 130). The commercial treaties concluded between the United States and Spain prior to 1898 were replaced by the general treaty of July 3, 1902 (Malloy's Treaties, 1910, II, 1701).

CIVIL PROCEDURE

CODE OF CIVIL PROCEDURE.

Civil procedure in Spain is governed by the act or code of civil procedure (*ley de enjuiciamiento civil*) of February 3, 1881, with some amendments, and the judiciary act (*ley orgánica sobre el poder judicial*) of September 15, 1870, with its supplementary law of October 14, 1882. Until 1855 civil procedure, except in minor cases, was practically governed by the *Partidas* and the *Novísima recopilación*. The constitution of 1812 in article 12 brought about some reforms, and a few important statutes were later enacted, notably, the provisional regulation for the administration of justice on September 26, 1835, and the law in regard to the courts of first instance on May 1, 1844. The first civil procedure act was adopted October 5, 1855, and was extended to Cuba

[1] Benito, Lorenzo. Las cámaras de comercio. Madrid, Rev. de legislación, 1899. Pamphlet.

and Porto Rico, December 9, 1865. The act of 1855 was completely revised and in the form of the present act or code was again promulgated February 3, 1881. An important amendment was enacted May 11, 1888, and others have followed from time to time. The code of 1881, considerably modified, was extended to Cuba and Porto Rico, September 25, 1885, and a law almost identical with the Cuban law was extended to the Philippines, February 3, 1888.

Procedure in commercial cases is governed by the code of civil procedure since the abolition of the commercial courts in 1868. Only in the voluntary or noncontentious jurisdiction are there special provisions for procedure in commercial matters. There is no separate procedural statute for bankruptcy, as the code fully covers the subject. A statute bearing a close relation to the code of civil procedure is the law of November 12, 1869, modified by the law of April 9, 1904, on insolvency and foreclosure proceedings against railway and other public service companies. The act of December 4, 1883, amended by royal decree January 7, 1884, regulating costs in courts of justice and notarial fees (*aranceles judiciales y notariales*), may be noted.

The code of civil procedure, having been enacted before the present civil code was adopted, contains in some instances conflicting provisions, and in others lacks the corresponding provisions of the civil code, as in the case of the family council. In form it is complicated and somewhat longer than the civil code. It is arranged in three books, which together contain 2,182 articles. Spanish civil procedure is divided into two divisions or jurisdictions, according to the general nature of the action, contentious (*contenciosa*) and voluntary or noncontentious (*voluntaria*). Book I contains provisions concerning jurisdiction and procedure common to all cases. Book II covers the contentious jurisdiction which is employed in actual controversial litigation. Title V of book II provides for a unique arbitration of civil suits out of court (*juicios arbitral y de amigables componedores*), a Spanish institution which has proven eminently successful. Book III, which is devoted to voluntary jurisdiction, is divided into two parts. Part one covers civil cases in general, and part two commercial cases. Voluntary jurisdiction, which corresponds to the noncontentious jurisdiction of Germany,

France and other European countries, is employed when, without any contest between the parties, judicial intervention is necessary for the official legal authentication of certain acts, e. g., acts in the nature of *ex parte* proceedings, as those for adoption, appointment of guardian, administration of estates, etc.

GENERAL LITERATURE

There is no English translation of the Spanish code of civil procedure, but the code of Cuba and Porto Rico was translated by the War Department[1] in 1901 and reprinted in Laws of Porto Rico (*supra*, p. 48). Convenient editions of the Spanish code are published by the *Revista de los tribunales*.[2] The eighth edition appeared in 1912. The code also appears in Medina's collection (*supra*, p. 48). Rives,[3] an authority on the subject, has recently (1912) published what is considered the most important annotated edition of the code, including the latest related statutes and the relevant judicial decisions. The code of Cuba and Porto Rico was likewise published by the *Revista de los tribunales*.[4] The official edition of the Philippine code[5] before the American occupation was published in 1888.

Two excellent commentaries on the code have made their appearance. The first is the work of Manresa,[6] which contains an exhaustive treatment of every section of the law. Three editions have appeared; the last, in 1910, was edited by Rives who has changed the text somewhat. The second important

[1] Translation of the law of civil procedure for Cuba and Porto Rico with annotations, etc., and amendments made since the American occupation. By the War Department, Division of Insular Affairs. Washington, Government Printing Office, 1901. 544 p.

[2] Ley de enjuiciamiento civil de 3 de febrero de 1881 con las reformas . . . anotada . . . 8th ed. Madrid, Góngora, 1912. 855 p.

[3] Rives y Martí, Francisco de P. Ley de enjuiciamiento civil de 3 de febrero de 1881, acomodada a los últimos textos, etc. . . . con notas y la jurisprudencia. Madrid, Hijos de Reus, 1912. 2 v.

[4] Ley de enjuiciamiento civil para las islas de Cuba y Puerto Rico. Por la redacción de la Revista de los tribunales. 3d ed. Madrid, Góngora, 1896. 731 p.

[5] Ley de enjuiciameinto civil para las Islas Filipinas y demás archipiélagos españoles de oceania. Ed. of Madrid, Ramón Moreno and Ricardo Rojas, 1888. 556 p.

[6] Manresa y Navarro, José María. Comentarios á la ley de enjuiciamiento civil. 3d ed. Madrid, Hijos de Reus, 1910. 7 v.

commentary was prepared by the *Revista general de legislación* under the direction of Reus.[1] Special attention is given to the citation of the relevant decisions of the Supreme Court. This work has appeared in its second edition. A useful work for the practitioner is the manual by Silvela and Barrioberro.[2] It is divided into five parts. The first deals with civil procedure and contains 78 forms, including those for every possible civil action. The second covers criminal law, and suitable forms are given. The third takes up special jurisdictions, as trials in the Senate, military courts, etc. The fourth discusses ecclesiastical courts, while the fifth contains general comments by the authors.

Among the general treatises on procedure that warrant mention is the work of Lastres.[3] This also includes criminal and ecclesiastical procedure. Another treatise of even more importance is that of López-Moreno,[4] which includes criminal law and is annotated with the laws of all leading European nations. A complete treatise covering both civil and criminal procedure and notarial law is the "practical forensics" of Miguel Romero.[5] Gutiérrez-Cañas's[6] "*Ensayo*" is an original and fundamental discussion in four volumes of the philosophy, technique and ethics of judicial procedure.

For procedure in bankruptcy and suspensions of payment reference may be made to the work of Rives,[7] the second edition of which appeared in 1904.

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[1] Reus, Emilio. Ley de enjuiciamiento civil de 3 de febrero de 1881 concordada y anotada con gran extensión . . . jurisprudencia . . . por la redacción de la Revista general de legislación y jurisprudencia . . . 2d ed. Madrid, Hijos de Reus, 1907–1910. 1–4, 6 v.

[2] Silvela Loring, Jorge and Barriobero Armas, Juan. Manual de práctica forense. Madrid, Hijos de Reus, 1905. 618 p.

[3] Lastres, Francisco. Procedimientos civiles, criminales, canónicos y contencioso-administrativos . . . seguidos de un manual de formularios. 11th ed. Madrid, V. Suarez, 1902. 2 v.

[4] López-Moreno, Santiago. Principios fundamentales del procedimiento civil y criminal . . . Madrid, V. Suarez, 1901. 2 v.

[5] Miguel y Romero, Maura. Práctica forense. 2d ed. Valladolid, Estación, 1904. 2 v.

[6] Gutiérrez-Cañas Gutierrez, Demetrio. Ensayo sobre la filosofía del procedimiento judicial, la técnica y la moral en el foro. Valladolid, Nacional y Extranjero, 1900–05. 4 v.

[7] Rives y Martí, Francisco de P. Teoría y práctica de actuaciones judiciales en materia de concurso de acreedores y quiebras. Prólogo del José María Manresa y Navarro. 2d ed. Madrid, Fortanet, 1904. 2 v.

JUDICIARY ACT

The judiciary act, which comprises 932 articles, has been supplemented by special statutes. The most important is the recent law of municipal justice of August 5, 1907. Others worthy of mention are the laws of April 5, and May 8, 1904, creating a special chamber of the High Court of Justice to take jurisdiction of contentious administrative suits, and the law of jurisdictions of March 23, 1906. The act in amended form was extended to Cuba, Porto Rico, and the Philippines, January 5, 1891.

The kingdom, including the Balearic and Canary Islands, is divided for the purpose of the administration of justice into municipal *terminos*, *partidos* and *distritos*. On the civil side three grades of courts are provided for: (1) courts of the first instance (*juzgado de primera instancia*); (2) courts of appeal (*audiencias territoriales*) for each district; and (3) the Supreme Court (*Tribunal Supremo*), located at Madrid. It is interesting to note that the jury is only employed in certain criminal, but not in civil, suits.

The contents of the act and an explanation of the judicial system in Spain and of the laws of procedure, especially as regards commercial matters, are discussed in pages 34–86 of the "Commercial laws of the world" (*supra*, p. 65). The various courts and the judicial system of the Spanish Monarchy are briefly described in volume 21 (1914) of Case and Comment, at pages 547–550. The judiciary act as extended to the American colonies was translated in 1899 by the United States War Department.[1] Several supplementary statutes, likewise translated, are appended. The judicial organization of the Philippines before and after the American occupation, with references to the Spanish system, is discussed in the course of an article on the administration of justice in the Philippine Islands by the Solicitor-General of the Islands, George R. Harvey, in volume nine (1914) of the Illinois Law Review, pages 73–97. Land registration, appointment of judges, admission to the bar, and other interesting topics are included.

[1] Compilation of the organic provisions of the administration of justice in force in the Spanish colonial provinces and appendices relating thereto. Translated by the U. S. War Dept. Washington, Government Printing Office, 1899. 170 p.

Bravo Moltó[1] in his two volume work on judicial organization includes an historical account of the courts of Spain. Sánchez de Ocaña[2] also published a work on the same subject, which includes a copy of the act fully annotated. Ugarte[3] has urged some reforms in the administration of justice, which he has embodied in his work (1906). The most recent statute affecting the judiciary act, the law of August 5, 1907, on municipal courts, has received full treatment in the commentary of Rives[4] and in the small but useful manual edited jointly by Rodríguez and Gutiérrez Jiménez.[5] Judge Zaragoza[6] of the court of first instance in Madrid edited an annotated text of the law in 1908 intended as a practical guide for the law courts.

When private rights were violated by official acts of the administration the questions of claims, or the litigation arising therefrom, were tried, from September 18, 1888 to 1904, in special district courts with a separate appeal court in Madrid, the *Tribunal centencioso-administrativo.* The statute of September 18, 1888, was amended to a great extent by the law of June 22, 1894, in regard to the powers and jurisdiction of this court. The law of April 5, 1904, abolished the court and created a new chamber (*sala*) of the Supreme Court to exercise the same powers and fulfill the same duties under the statute of 1894. Caballero[7] has published a three volume work on the subject of *contencioso-administrativo*, or the law governing claims against the state, but the work has not attained much promi-

[1] Bravo Moltó, Emilio. Organización judicial vigente con una introducción histórica. Madrid, Nuñez, 1890. 2 v.

[2] Sánchez de Ocaña, Ramón. Organización judicial vigente. Leyes orgánicas de 15 septiembre 1870 y de 14 octubre 1882 anotadas y concordadas. Madrid, Góngora, 1894. 800 p.

[3] Ugarte, Janier. Reformas en la administración de justicia. Apuntes para su estudio. Madrid, V. Suarez, 1906. 237 p.

[4] Rives y Martí, Francisco de P. Ley de 5 de agosto de 1907 reorganizando la administración de justicia en los juzgados municipales, comentada y concordada . . . Madrid, Hijos de Reus, 1909. 627 p.

[5] Rodríguez, Antonio G., and Gutiérrez Jiménez, M. Justicia municipal; manual práctico para la aplicación de la ley de 5 de agosto de 1907. Madrid, J. Palacios, 1908. 393 p.

[6] Zaragoza y Guijarro, José. Ley de justicia municipal . . . annotada, etc. . . . Madrid, Gaceta de Madrid, 1908. 298 p.

[7] Caballero y Montes, José;. Lo contencioso-administrativo. Zaragoza, Escar, 1902–1904. 3 v.

nence. It is generally conceded by critics that the commentary of González[1] is the most reliable and important on the subject. Two older treatises still retain enough authority to warrant mention—one by Alfaro,[2] published in 1875, and the other by Gallostra,[3] published in 1881. The latter[4] also published a brief collection of the judicial decisions (*jurisprudencia*) in 1867. Attention has already been called to the collections of reports of decisions and digests (*supra*, p. 12).

NOTARIAL LAW

Notarial law bears a close relation to the voluntary jurisdiction of the code of civil procedure, but is governed by separate statutes. It is of far more importance than the similar institution of Anglo-American law, and the practice of the profession of notary requires long training. As public officials they are not permitted to hold other governmental positions and are governed, as the lawyers, by a College of Notaries (*Colegio de notarios*). The function of a notary is to execute and certify contracts and other extrajudicial instruments, and to protest negotiable paper. They are required to keep the original documents and execute copies. Under Spanish law practically all deeds, contracts, and agreements of importance must be certified to by a notary, and are called thereafter *instrumentos públicos*.

The Spanish notarial law was promulgated May 28, 1862. This was amended by the addition of 124 articles, November 9, 1874, and after this date numerous supplementary statutes were enacted. The law in modified form was extended to Cuba and Porto Rico on October 29, 1873. The law in force in the Philippines at the time of their acquisition by the United States was passed February 15, 1889, and the rules governing its application followed on April 11, 1890.

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[1] González, Alfonso. La materia contencioso-administrativa, comentario á la legislación vigente, jurisprudencia ... Madrid, L. Martínez, 1903. 468 p.

[2] Alfaro y la Fuente, Santos. Tratado completo de lo contencioso-administrativo. Madrid, Nicolas González, 1875. 642 p.

[3] Gallostra y Frau, José. Lo contencioso-administrativo. Madrid, M. Tello, 1881. 618 p.

[4] Gallostra y Frau, José. Jurisprudencia del Consejo de Estado sobre la procediencia de las demandas administrativas. Madrid, Rev. de legislación, 1867. 88 p.

The notarial laws as extended to Cuba and Porto Rico [1] and those in force in the Philippines [2] in 1899 were translated by the War Department in 1899. There may also be mentioned the translation of the general instructions [3] for drafting public documents subject to record in the Spanish colonial provinces, issued in 1893.

A handy collection of the notarial laws of Spain was published by Medina and Marañón,[4] whose collections in other branches of the law have been frequently referred to. A guide to the notarial system of Spain by Escosura [5] appeared in 1898. The well known jurist Costa [6] published a work in 1892 advocating the reorganization of the notarial system, the registry of property and the administration of justice. The work of Novoa [7] on drafting of the public instruments is in fact a complete treatise of the art and science of the notary. A useful and practical work is the manual of Romero [8] for the drawing up of instruments by notaries, which also includes the tariff of fees, the stamp law and the regulations governing the transfer of real and personal property. This work has been spoken of as a veritable compendium of legal information. Possibly a more extensively used manual for the drafting of public instruments is the work of Zarzoso,[9] the sixth edition of which

[1] Translation of the notarial laws in force in Cuba and Porto Rico. By U. S. War Department. Washington, Government Printing Office, 1899. 58 p.

[2] The notarial laws in force in the Philippine Islands, and appendices relating thereto. Translation by U. S. War Department. Washington, Government Pringing Office, 1899. 72 p.

[3] Translation of the general instructions for drafting public documents subject to record in the Spanish colonial provinces. By U. S. War Dept. Washington, Government Printing Office, 1899. 19 p.

[4] Medina, León and Marañón, Manuel. Leyes notariales de España conforme á los textos oficiales. Madrid, J. Rueda, 1905. 430 p.

[5] Escosura, Gabriel de la. Guía notarial de España (públicado por r. o. de 16 de febrero de 1898). Madrid, Piulo y Orovio, 1898. lv.

[6] Costa, Joaquín. Reorganización del notariado, del registro de la propiedad y de la administración de justicia. Madrid, Rev. de legislación, 1890–1893. 347 p.

[7] Novoa Seoane, Ramón. El progreso del instrumento público. 2d ed. Madrid, Suc. de M. Minuesa de los Rios, 1910. 800 p.

[8] Romero y Delgado, Arturo. Manual teórico-práctico para la redacción de los instrumentos públicos. Madrid, Hijos de Reus, 1909. 466 p.

[9] Zarzoso y Ventriva, Esegual. Teoría y práctica de la redacción de instrumentos públicos. 6th ed. Valencia, Juan Guit, 1900. 746 p.

appeared in 1900. Torre é Izquierdo[1] has produced two works of merit—one, his "*Examplarium*," being simply a collection of law forms, and another work, a commentary upon the legislation governing notaries.

COSTS AND FEES.

The law of costs is naturally associated with the law of procedure. The law on this subject is governed by the statute of December 4, 1883, which went into effect January 1, 1884. A few changes have been made by subsequent statutes. The official edition of the law can be obtained from the Minister of Grace and Justice.[2] This statute contains a complete list of the fees for proceedings in the trial, appeal and supreme courts. Medina and Marañón (*supra*, p. 48) include it in their collection and have annotated the different sections briefly.

Before leaving the subject of civil procedure it is well to call attention to the important convention of July 17, 1905, between Spain, Germany, Austria-Hungary, France, Italy, and most of the other continental countries. The convention was ratified by the signatory powers in 1909.[3] By virtue of this agreement, service in any of these countries of judicial and extra-judicial notices and process coming from any of the others is provided for. The consular officers transmit the service and notice is served by local officers. Proof of service is returned in the same way. In civil and commercial matters letters rogatory may be issued by the judicial authority of one country to that of another, requesting the performance of any judicial act or the taking of testimony. The request must be complied with and carried out by all the usual coercive means of compelling obedience to domestic writs. A citizen of one country, if sued or suing in another country, need not give security for costs or

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[1] Torre é Izquierdo, Tírso de la. Exemplarium. Valencia, M. Pan, 1907–8. 2 v.

Same. Comentarios á la legislación notarial. Valencia, M. Pan, 1904. 390 p.

[2] Aranceles judiciales para los negocios civiles, aprobados por r. d. de 4 de diciembre de 1883. Madrid, Ministerio de Gracia y Justicia, 1883. 1 v.

Same. In effect Feb. 1, 1898. Madrid, Tomás Jordan, 1897. 49 p.

[3] See 36 Clunet, 1909, pp. 853–865 and 41 Clunet, 1914, p. 881.

judgment merely because he is a foreigner or domiciled in a foreign country. Other restrictions usually in force against foreign litigants are abolished.

CRIMINAL LAW.

The ancient codes of Spain had many sections devoted to criminal law. The *Siete partidas* contained the most complete and elaborate provisions, and the *Nueva recopilación* and the *Novísima recopilación*, which followed, merely repeated in detail the rules there laid down. Besides the treatment of the subject to be found in the general historical works mentioned (*supra*, p. 36 *et seq.*), one of the older legal historians Gutiérrez Fernández[1] published in 1866 a useful historical account of criminal law. Du Boys'[2] French treatise, which traces the history from earliest times to the middle of the eighteenth century, was translated into Spanish in 1872 by Vicente, who added a few new annotations and appendices. The work, from a historical standpoint, has been adversely criticized. Prof. Von Thót discussed at some length the history of the Spanish literature on criminal law in his article (pp. 356–377) in the *Gerichtssal*, 1912.

The progress of civilization and the growth of modern ideas of justice at the beginning of the nineteenth century rendered the criminal laws, because of their cruelty and harshness, out of harmony with the times. Reforms were begun as early as 1812 in the constitutional *Cortes* of Cadiz. The first penal code was promulgated in 1822 and a second followed in 1848. The constitution of 1869 contained provisions conflicting with the existing penal laws, especially those relating to personal rights, the free exercise of religious worship, punishments for various crimes committed by one person, perpetual punishments, the *argolla*, etc. It became necessary therefore to publish a new code.

The present code, which made but few important changes in the code of 1848, was authorized by the act of June 17, 1870,

[1] Gutiérrez Fernández, Bentio. Exámen histórico del derecho penal. Madrid, Peñuelas, 1866. 478 p.

[2] Du Boys, Albert. Histoire du droit criminel de l'Espagne. Paris, Durand et Pedone-Lauriel, 1870. 732 p.
Version al castellano . . . con apéndices por José Vicente y Caravantes. Madrid, José Mª Penier, 1872. 568 p.

and went into effect August 30 of the same year. Modifications of many articles were effected by the statutes of July 17, 1876, January 1, 1900, April 9, 1900, July 21, 1904, January 3, 1907, and January 3, 1908. In addition there have been enacted several more or less important laws for special crimes. The code, considerably modified, was extended to Cuba and Porto Rico May 23, 1879, and to the Philippines September 4, 1884, although it did not go into effect there until December 17, 1886.

Offenses in Spain are divided according to their nature into felonies, crimes (*delitos*), and misdemeanors (*faltas*). The division of breaches of the law into those *mala in se* and *mala prohibita* does not exist. Following the first distinction the penal code, which consists of 626 articles, is divided into three books. Book I contains general provisions applicable to both *delitos* and *faltas*, such as the extenuation and aggravation of offenses, persons responsible, etc. Book II covers *delitos* and the penalties therefor, while *faltas* are covered by book III.

The code of Cuba and Porto Rico was translated into English in 1898 by a committee [1] of seven lawyers drawn from the bar of Havana. The translators state that the work was done hastily and is only substantially correct. A few brief notes are appended. A translation of this code [2] as well as of the penal code of the Philippines [3] was made by the War Department, in 1900. Beyond these there are no English translations of the Spanish code although the Comparative Law Bureau of the American Bar Association announces that S. P. Scott has prepared for it a translation which is already in type (1914). A German translation was published in 1909 by Hartwig.[4] In a brief article in the Annual Bulletin of the Comparative Law Bureau (1910), pages 62–80, S. P. Scott compared Spanish criminal law with

[1] The penal code of the islands of Cuba and Porto Rico. Translated into English with explanatory notes by seven lawyers. Havana, La propaganda literaria, 1898. 145 p.

[2] Translation of the penal code in force in Cuba and Porto Rico. By U. S. War Department, Washington, Government Printing Office, 1900. 175 p.

[3] Same. Philippines. Washington, Government Printing Office, 1900. 155 p.

[4] Spanisches strafgesetzbuch. Translation by Alfredo Hartwig. Berlin, J. Guttentag, 1909. 127 p.

Anglo-Saxon law. The writer describes the contents of the penal code and compares the conduct of criminal trials with our common-law procedure. The theory of the Spanish penal code was compared with the French legislation in a work by Louis and Valdeson Laget,[1] published in 1881.

The official edition[2] of the code as promulgated in 1870 is in print, as well as the official code[3] of Cuba and Porto Rico. Bravo[4] has published the Code as extended to the Philippines. A useful and well recommended edition of the Spanish code is contained in the collection of the penal laws by Medina and Marañón.[5] This work contains the texts of the constitution of the Spanish monarchy, the penal code, the code of criminal procedure, the jury law, the military and maritime penal codes and all the relevant statutes to 1909. The different sections of the code as affected by the amendatory laws are printed in their latest revision, and are annotated with the important decisions of the Supreme Court. A good digest or dictionary of all the penal legislation, including procedure, has been edited by Cadalso.[6] The subject matter is arranged under different topics in alphabetical order. A supplementary volume extends the work to 1908.

Reports of judicial decisions in criminal matters have been published separately since 1874. There is no complete digest of these although several fragmentary ones exist. Attention

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[1] Laget, Louis, and Laget, Valdesón. Théorie du code pénal espagnol, comparée avec la législation française. 2d ed. Paris, Marchal and Billard, 1881. 527 p.

[2] Código penal reformado, mandado publicarse . . . por ley de 17 de junio de 1870. Madrid, Ministerio de Gracia y Justicia, 1870. 1 v.

Same. Con notas y los discursos pronunciados en las Cortes constituyentes . . . ; seguido de un apendice . . . leyes sobre casación criminal, reforma del procedimiento criminal. Madrid, Rev. de legislación, 1870. 310 p.

[3] Código penal para los provincios de Cuba y Puerto Rico. Madrid, Nacional, 1879. 179 p.

[4] Bravo, Julio. Código penal vigente en las islas Filipinas (4 de setiembre de 1884). Madrid, Nuñez, 1887. 276 p.

[5] Medina, León, and Marañón, Manuel. Leyes penales de España conforma á los textos oficiales. Madrid, Viuda é Hijos de Tello, 1909. 1,480 p.

[6] Cadalso y Manzano, Fernando. Diccionario de legislación penal, procesal y de prisiones. Madrid, J. Góngora y Alvarez, 1896. 3 v. with suppl. to1909. 1,022 p.

has been called to the criminal law reports and the digests under the heading of court reports (*supra*, p. 12). In this connection, mention may be made of the edition of the penal code by Hidalgo García,[1] published in 1908. All the decicions rendered up to 1908 in interpretation of the various articles of the penal code are arranged and classified in a clear and convenient manner, and the work enjoys considerable reputation. A learned introduction by the distinguished criminologist, Bernaldo de Quirós, is also included.

There are several commentaries on the penal code. A leading work for practical reference use is that of distinguished jurist Groizard,[2] who has served as a member of the general commission of codification and is an ex-minister of state, etc. The commentary in form is somewhat tedious and prolix. The work of Viada [3] of Madrid, of equal rank and authority, is used to supplement Groizard's commentary. It is especially recommended for its examination and correlation of the relevant decisions of the Supreme Court. Supplements carry the work to 1911. An older commentary, which was the leading authority prior to the revision of the code in 1870, is that by Pacheco,[4] the *fiscal* or solicitor for the state in the Supreme Court. The work has been revised in two editions subsequent to the promulgation of the present code, so that it still has some value.

Few general treatises of merit on the subject of criminal law exist. The leading work is Silvela's,[5] of which a second edition was published by his son, in 1903, with the necessary

[1] Hidalgo García, Antonio. El código penal conforme á la doctrina establecida por el tribunal supremo . . . de Madrid, Rev. de legislación, 1908. 2 v.

[2] Groizard y Gómez de la Serna, Alejandro. El código penal de 1870 concordado y comentado. Salamanca, Esteban-Hermanos, 1897–1899. 8 v.

[3] Viada y Vilaseca, Salvador. Código penal reformado de 1870 con las variaciones introducidas en el mismo, concordado y comentado . . . seguido de un . . . repertorio de jurisprudencia y apendice con las leyes penales . . . 4th ed. Madrid, Fernando Fé, 1890–1911. 4 v. and 5 supp.

[4] Pacheco, Joaquin Francisco. El código penal concordado y comentado. 6th ed. Madrid, Manuel Tello, 1888. 3 v.

[5] Silvela, Luis. El derecho penal. Estudiado en principios y en la legislación vigente en España. 2d ed. Madrid, Ricardo Fé, 1903. 2 v.

changes required by time and references to modern theories. Prof. Dorado[1] of the University of Salamanca, probably the greatest of contemporary specialists in penal law in Spain, has published a theoretical treatise covering the sources of criminal law, the interpretation of the statutes and related matters. The author originally intended this to be one volume of a larger work, but his plans did not materialize. The treatise used in the law school of the University of Madrid is that of Prof. Valdés Rubio.[2] The work, although severely criticized by the profession and teachers of law, is now (1914) appearing in its fifth edition. It is principally of value for the legislation cited. The first volume of a recent (1913–14) treatise by Rovira[3] has appeared, but this work has likewise been adversely criticised.

To fill the need of a good treatise on criminal law some law schools have adopted a translation of Pessina's[4] well-known Italian work annotated with Spanish notes, legislation, judicial decisions, etc. The translation is likewise used by the profession in general. The latest and best edition of Pessina is that of Prof. Cuello of the University of Barcelona, issued in 1913. This is but one example of the frequent employment in Spain of foreign law books.

A unique and interesting work is the monograph of Langle Rubio[5] on woman in criminal law. The crimes by and against women are discussed briefly, as well as woman's general position in criminal law; considerable space is devoted to the desertion of children which, since the Middle Ages, has been one of the crying sins of the country, and has multiplied the number of foundling hospitals to an incredible extent.

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[1] Dorado, Pedro. Problemas de derecho penal. 2d ed. Madrid, Rev. de legislación, 1895. 469 p.

[2] Valdés Rubio, José M. Derecho penal. 5th ed. Madrid, Asilo de Huérfanos de S. C. de Jesus, 1913. v. 1 (2 additional vols. will appear in 1915).

[3] Rovira Carrero, P. I. Curso de derecho penal. Madrid, Rev. de legislación, 1913. v. 1. (Others in publication.)

[4] Pessina, Enrique. Elementos de derecho penal. Traducción por Eugenio Cuello. Madrid, Hijos de Reus, 1913. 940 p.

[5] Langle Rubio, Emilio. La mujer en el derecho penal. Madrid, Hijos de Reus, 1911. 124 p.

CRIMINAL PROCEDURE.

The system of criminal procedure which prevailed in Spain under the ancient codes and until modern times was the secret and written procedure, the hampered defense, and torture. This system was renounced and the accusatory system adopted in the reforms instituted by the code (act) of 1882. The present code, or act, was promulgated September 14, 1882, and has had comparatively few amendments. Article 954, in regard to appeal, was modified by a statute enacted August 7, 1899, which expressly allowed to the heirs the civil remedies for conviction by false testimony. The code of 1882—somewhat altered—was extended to Cuba and Porto Rico on October 19, 1888, and became effective January 1, 1889. This code has been amended in important particulars. The extension of the code to the Philippines, in slightly modified form, occurred in 1884, but it did not go into effect there until 1888.

There are several special statutes that bear directly upon the law of criminal procedure. The judiciary act (*supra*, p. 87) is naturally the most important, as the entire judicial system was organized and is governed by it. The law of April 20, 1888, reestablishing the use of the jury in criminal trials is also important. This subject will be discussed more at length presently. The respective jurisdictions and powers of the administrative authorities and the judicial courts in criminal matters are defined by the royal decree of September 8, 1887. A special law reforming both the penal and procedural provisions concerning smuggling and violations of the tariff law was enacted September 3, 1904. This law is rather extensive, embracing 128 articles.

The law of criminal procedure now in force contains 998 articles and a final provision, classified under seven divisions or books. Book one deals with general provisions, jurisdiction of courts geographically and by degree of crimes, rights of challenge, prosecution and defense, procedure, exceptions, decisions as to matters of form, jurisdiction, sentences, summons, communications between courts, appeals and costs. Book two considers the *sumario*, or preliminary investigation, corresponding to that of a grand jury. Book three takes up public and oral trials. Special proceedings and extradition,

appeals and reviews, prosecution of *faltas*, or misdemeanors, and the execution of sentences are treated of successively in books four, five, six and seven.

A complete analysis of the code of criminal procedure was made soon after its promulgation by a French lawyer, Theurault, in the twelfth volume of *Annuaire de législation etrangère* (1882), pages 693–720. He discusses each section and summarizes its contents. Verdier and Depieges [1] made a translation of the code in 1898 under the authority of the French government, which has caused many of the important foreign codes to be translated for the benefit of its own lawmakers. The code as in force in Cuba and Porto Rico is included in the translations made by the War Department (*supra*, p. 48), and was also published [2] separately with the text in Spanish added.

The text of the code of criminal procedure is often included in the same volume with the penal code, and sometimes with the code of civil procedure under the head of procedural laws. The *Revista de legislación* [3] published an annotated edition of the code of criminal procedure, soon after its promulgation, in two volumes. The required forms for pleading are given. A recent edition of the code is printed in the collection of criminal laws by Medina and Marañón (*supra*, p. 94). Amat [4] in 1903 published a small annotated edition of the code. The *Revista de los tribunales* issues newly annotated editions from time to time.

The court decisions on criminal procedure, from the promulgation of the present code until 1893, have been collected and digested in the form of a manual or handbook by a law writer who signs his name R. D. V.[5] Attention may also

[1] Code de procédure criminelle espagnol (14 septembre 1882). Traduit et annoté par Gabriel Verdier and Joseph Depieges. Paris, Impr. nationale, 1898. 404 p.

[2] Translation of the law of criminal procedure for Cuba and Porto Rico (with Spanish text) with annotations . . . By U. S. War Department, Washington, Government Printing Office, 1901. 393 p.

[3] Ley de enjuiciamiento criminal de 14 de septiembre de 1882, concorda y anotada . . . por la redacción de la Revista general de legislación y jurisprudencia . . . Madrid, Hijos de Reus, 1883–1884. 2 v.

[4] Amat, Vicente. Ley de enjuiciamiento criminal comentada y anotada . . . Barcelona, Sopena, 1903. 395 p.

[5] R. D. V. Manual de jurisprudencia procesal en materia criminal (1882–1893). Madrid, Góngora, 1894. 1 v.

be called to the work of Herrero Martínez[1] on criminal procedure in all Spanish courts from the lowest municipal court to the Supreme Court at Madrid. It is practically an exhaustive digest of decisions of the court of last resorts on the most important points of criminal law. Appended to nearly every article is a series of questions which are answered by citations of, or references to, decisions on the matters in question. The work contains no forms.

A valuable contribution to the literature of criminal procedure is the commentary recently commenced, but only partially completed, by Aguilera de Paz.[2] The commentator is a judge of one of the appeal courts and an author of several important legal works. The commentary is to encompass five volumes when completed, but at present (1914) only three have appeared.

In the recent English translation of Esmein's[3] history of continental criminal procedure, published as one of the Continental legal history series, a few pages (295–301, 584–585) are devoted to Spain.

Treatises on criminal procedure have been often combined with treatises on civil procedure, notably in the works of Lastres (*supra*, p. 86) and López-Moreno (*supra*, p. 86). The complete and useful manual of Silvela and Barrioberro (*supra*, p. 86) also includes criminal law. Soon after the promulgation of the code of criminal procedure, in 1882, several treatises were published explanatory of the new law. Among those that warrant mention are the works of Marfá,[4] and of Armas[5] in collaboration with Domínguez-Alfonso. A brief work on

[1] Herrero Martínez, Mariano. Ley de enjuiciamiento criminal reformada. Valladolid, Castellana, 1909. 846 p.

[2] Aguilera de Paz, Enrique. Comentarios á la ley de enjuiciamiento criminal. Madrid, Hijos de Reus, 1913. 3 v. and cont.

[3] The Continental legal history series. A history of continental criminal procedure with special reference to France. By A. Esmein. Translated by John Simpson. Boston, Little, Brown and Co., 1913. 640 p.

[4] Marfá, Juan. Simplificación de la nueva ley vigente de enjuiciamiento criminal (de 14 de septiembre de 1882). Barcelona, Peninsular, 1883. 1060 p.

[5] Armas y Saenz, Ramón and Domínguez-Alfonso, Antonio. Práctica del nuevo enjuiciamiento criminal de 14 de septiembre de 1882. Madrid, Fortanet, 1883. 639 p.

the admission of evidence in criminal cases was published in 1910 by López Infantes.[1]

The question as to how far expert testimony can be profitably received on an issue of criminal law and under what necessary safeguards has been admirably discussed by Dorado,[2] professor of criminal law in the University of Salamanca. Such important questions as the weight to be given expert evidence of physicians, the right of a lawyer to press the defense of emotional insanity, etc., are critically discussed. The author advocates the education of criminal judges in medical jurisprudence in order to confine the influence of the experts within proper limits.

Several matters of criminal procedure are of especial interest for investigators of Spanish law. Among these may be mentioned the fact that the courts occupy a middle ground between the rule of presumption of innocence and that of presumption of guilt. This position is often said to be less conducive to miscarriages of justice than either of the two extremes. A statute of limitations, relating both to *delitos* and *faltas*, is provided for under the criminal code (sections 132–135). Crimes involving capital punishment or life imprisonment can not be prosecuted after a lapse of 20 years; and lesser offenses, after periods varying from two months to fifteen years.

Jury Law.—The jury was employed in Spain as early as 1820 in trials of offenses committed by the press. A somewhat broader scope was later given the system, but in 1875 the entire institution was suppressed. The act of April 20, 1888, reestablished a modified form of the jury system and gave it jurisdiction to sit in cases of felonies and some misdemeanors. The jury was never extended to Cuba, Porto Rico, or the Philippines by the Spanish government, and does not now exist in many of the Mexican states and the other Spanish-American countries. An exposition and discussion of the text of the Spanish law was published by Bravo Moltó,[3] president of the Criminal Chamber of the Supreme Court, immediately upon its appearance.

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[1] López Infantes, Leopoldo. Apreciación de la prueba en materia criminal. 2d ed. Madrid, Hijos de Rues, 1910. 152 p.

[2] Dorado Montero, Pedro. Las peritos medicios y la justicia criminal. Madrid, Hijos de Reus, 1906. 291 p.

[3] Bravo Moltó, Emilio. La ley del jurado. Madrid, Nuñez, 1888. 270 p.

The text of the law has been translated into French in an appendix to the translation of the law of criminal procedure, by Verdier and Depieges (*supra* p. 98). A good edition of the text of the jury law, annotated and supplied with relevant rules for the admission of evidence and various forms required, was prepared by Sánchez de Ocaña [1] immediately after its promulgation. The most useful work for judges and lawyers, however, is the treatise of García,[2] in two volumes, with a supplement.

Another practical, but less extensive, guide to the jury law by Judge Vipegon [3] appeared in 1901, in which the leading foreign codes are compared with the Spanish law. This and García's work are in current use. A well recommended commentary on the jury law is the work of the jurist Pacheco;[4] it appeared in 1888 following the enactment of the jury law. No recent commentary has been published.

The work of Rodríguez Pinilla[5] (1873), though now old, is yet of permanent value in the history of law. He traces the origin of the jury and discusses its advantages in the first half of his work. The second half he devotes to comparing the jury systems of France, England, and Portugal. At that time, the reorganization of the jury was a question of much importance in Spain.

The Sumario.—Every criminal trial in the more serious offenses is divided into two stages. The first stage is the *sumario*, which has no exact equivalent in our procedure. In effect, it is similar to the secret investigation of a grand jury. After the crime has been committed and the criminal apprehended, he is kept in solitary confinement while the state, through a judge of the first instance and its attorney (*fiscal*), conducts a thorough *ex parte* investigation. The Spanish Constitution (arts. 4–5) prohibits the detention of accused persons except

[1] Sánchez de Ocaña, Ramón. Código manual del jurado. Madrid, Rev. de legislación, 1888. 160 p.

[2] García y Romero de Tejada, José. El libro del jurado. Jerez, "El guadalete," 1894–1897. 2 v. and supp.

[3] Vipegon. Guía de los jurados. Madrid, Ricardo Fé, 1901. 281 p.

[4] Pacheco, Francisco de. La ley del jurado comentada por . . . con un prólogo del Manuel Alonso Martínez. Madrid, Rev. de legislación, 1888. 941 p.

[5] Rodríguez Pinilla, Tomás. El jurado y su establecimiento en España. Madrid, La constitución, 1871. 196 p.

for just causes. The proceedings based on this constitutional provision are the nearest approach in Spanish law to our *habeas corpus*. The *sumario* has been treated of in a monograph by Saiz y Gómez.[1] To this work there is appended a description and comments on the organization of the criminal courts.

Conditional or Suspended Sentence.—The law of March 17, 1908, authorizing the employment of the conditional sentence (*condena condicional*) requires special mention. It is an important step in the reform of Spanish law. The law provides for the suspension of sentences under certain circumstances. Bernaldo de Quirós (*infra*, p. 106) has compared the system with our American system of probation, except that in the latter no sentence is pronounced in the first instance. This innovation in criminal procedure is still the object of lively discussion in Europe and theorists are divided on the question of its advisability.

The *Revista de los tribunales*[2] has published the above statute with an historical and explanatory discussion of its use, together with the *proyectos* and discussions produced prior to its enactment, with some relevant foreign legislation. The law for delinquent minors is also appended. González del Alba,[3] president of the appeal court of Madrid, has published an annotated edition of the statute. Every section is supplied with copious comments by the annotator and relevant supplementary laws. The introduction to this work came from the pen of the criminologist Bernaldo de Quiros.

Capital Punishment.—Capital punishment still exists in Spain although there has been in the past a great agitation for its abolition. The jurist Torres Campos[4] has championed the cause of the opposition and his memoir published in pamphlet form, is possibly the best known work on the subject. This article is summarized and reviewed in volume

[1] Saíz y Gómez, Miguel. El sumario y el juez de instrucción. Con un apéndice que contiene . . . ideas sobre organización de los tribunales, etc. Madrid, Góngora, 1890. 1 v.

[2] Ley de 17 de marzo de 1908 sobre condena condicional . . . por la redacción de la Revista de los tribunales. Madrid, Góngora, 1908. 170 p.

[3] González del Alba, Primitivo. La condena condicional. Madrid, Hijos de Reus, 1908. 129 p.

[4] Torres Campos, Manuel. La pena de muerte, y su applicación en España. Madrid, Góngora, 1879. Pamphlet.

25 of the Journal of jurisprudence (1881), pages 35–38. A work relating to the "death penalty," which warrants mention because of its merit and interesting contents, is the "studies" of González Naudin.[1] This work gives a complete history of this form of punishment, especially as to the tortures inflicted in the eighteenth and nineteenth centuries. The Spanish penal laws abound in excessive and cruel punishments, some of which are reflected in the codes of the Philippines, Cuba and Porto Rico. Under the American administration of these territories the eighth amendment of the Constitution of the United States is sometimes invoked. Prof. Schofield has published an interesting article in the fifth Illinois Law Review (1911), pages 321–335, discussing the question.

INDEMNITY FOR ERROR OF JUSTICE.—Infringements by wrongful convictions of the legal rights of defendants, under certain circumstances, are repaired by civil liability of the judges and punished by heavy fines and imprisonment. The law of August 7, 1899, provides that when the judge is insolvent the state itself will indemnify the unfortunate victim to the extent of his injuries. A comparative study of the various European systems of state indemnity for errors of criminal justice was recently published by Dr. Edwin M. Borchard in the Journal of criminal law and criminology, volume 3 (1913), pages 684–718, and reprinted as United States Senate Document 974, sixty-second Congress, third session.

MILITARY CRIMINAL LAW

Military and naval courts in Spain have a much broader jurisdiction than similar courts in the United States. In addition to jurisdiction over persons in the service they can try civilians in certain cases, as, for example, in cases of minor crimes involving property belonging to either branch of the service. The military law of Spain is governed by the code of military justice, *código de justicia militar*, promulgated September 27, 1890. This code is, in fact, a compilation of three earlier statutes with some minor adjustments. These three are the organic law of March 10, 1884, organizing the courts of war (*Tribunales de guerra*), the military penal code of December 17, 1884, and the law of military procedure (*ley de enjuiciamiento militar*) of November 29, 1886. The code of

[1] González Naudin, Sebastian. Estudios sobre la pena de muerte. Madrid, Rev. de legislación, 1872. 104 p.

1890 has been modified by a few later statutes, especially those of August 7, 1899, January 1, 1900, and August 25, 1904. The Supreme Council of the Army and Navy (*Consejo supremo de guerra y marina*) was organized under the law of December 17, 1890. This law contains over two hundred articles defining the powers and duties of the officials and the manner of procedure and records.

The code of military justice is composed of seven hundred and fifty articles arranged in three books. Book one treats of the organization and powers of military courts, their civil and military jurisdiction. Books two and three take up the military crimes and procedure.

The military and naval laws are included in the collection of penal laws by Medina and Marañón (*supra*, p. 94). The annotated edition of the code of military justice by Nido [1] is practically a commentary and is perhaps the most useful work on the subject. Soon after the promulgation of the code Sánchez de Ocaña [2] published an annotated edition.

The legislation governing the army is published officially by the Minister of War.[3] A dictionary or encyclopaedia of legislation on military matters was published by Rodríguez Jiménez [4] in 1903.

Several treatises dealing with the subject of military courts have appeared. Assistant Solicitor Piquer [5] of the Supreme Council published in 1906 a work describing the organization, powers and the procedure of military courts. A practical pocket guide for the administration of military justice was issued in 1910 by Trapaga and Blanco de la Viña.[6] Procedure

[1] Nido y Torres, Manuel del. Código de justicia militar, comentado y concordado. Madrid, La Correspondencia militar, 1911. 1064 p.

[2] Sánchez de Ocaña, Ramón. Código de justicia militar de 27 de septiembre de 1890 anotado y concordado. Madrid, Góngora, 1890. 591 p.

[3] Leyes constitutivas del ejército y organicas del estado mayor general . . . hasta el fin de diciembre 1896. Madrid, Depósito de la guerra, 1896. 214 p. with supplement.

[4] Rodríguez Jiménez, Eusebio. Diccionario de legislación militar, ó consultor del derecho administrativo militar, compendio general . . . Madrid, Depósito de la guerra, 1903. 2 v.

[5] Piquer y Martin Cortes, Rafael de. Los tribunales de guerra . . . Madrid, López y del Horno, 1906. 382 p.

Trapaga y Aguado, Adolfo and Blanco de la Viña, Gerrado. Cartera de bolsillo para la administración de justicia militar en el ejército. Madrid, Patronato de huérfanos de admr. militar, 1910. 851 p.

before the courts, both of the war and navy, is discussed in a treatise by Cabrerizo.[1]

Naval jurisdiction is considered as a part of the military establishment, but is governed by some special laws. The penal code of admiralty of August 24, 1888, governs this jurisdiction, together with the law of maritime courts of justice and naval procedure of November 10, 1894, as amended by the act of January 1, 1900. Soon after the promulgation of the code of 1888, Romero [2] published an edition with brief comments and some annotations. An official edition of the code appeared in 1894, published by the Department of the Navy. A good commentary containing all the laws governing the naval jurisdiction and all the statutes of necessary application in this field appeared in 1895, from the pen of Moreno.[3] The Department of the Navy [4] from time to time publishes the legislation concerning that department.

In Spain, as in other continental countries, military service is obligatory. In 1912 Trapaga [5] published a practical guide to the application of the act or law governing this service. A manual dealing with the pensions of widows and orphans of soldiers was published in 1910 by Saball,[6] a writer of authority.

The Supreme Council of the War and Navy issues officially a monthly bulletin which contains among other items of interest the decisions of the military courts.

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[1] Cabrerizo, F. El defensor ante los tribunales de guerra y marina. Madrid, Ministerio de marina, 1905. 282 p.

[2] Romero y Villanueva, José M. Código penal de la marina de guerra, de 24 de agosto de 1888. Con comentarios y un prólogo de . . . Madrid, Núñez, 1888. 272 p.

[3] Moreno y Lorenzo, Joaquin. La jurisdicción de marina. Tratado de todas las leyes y disposiones de, etc. . . . Madrid, Hijos de J. A. García, 1895. 1016 p.

[4] Colección legislativa de la armada. Madrid, del Ministerio de Marina. 1906. 1 v, with suppl.

[5] Trapaga y Aguado, Adolfo. Guía práctica para aplicar la ley del servicio militar obligatorio. Madrid, Cuerpo intendencia militar, 1912. 480 p.

[6] Saball, Fernando. Manual de las pensiones de viúdad y orfandad que corresponden a las familias de generales, jefes y oficiales del ejército. Madrid, López del Horno, 1910. 391 p.

CRIMINOLOGY AND REFORM OF CRIMINAL LAW

Modern ideas of criminology and reforms in criminal law did not reach Spain as early as they did the other countries of Europe, due perhaps to its western location and scientific seclusion. Although Spain was one of the first countries to take a census of its criminality (1729) and the practice of compiling annual statistics began early in the nineteenth century, these had bureaucratic rather than scientific aims. Recently, however, rapid strides have been made in the actual application of scientific reforms as well as in the advancement of the science itself.

The names of Bernaldo de Quirós and Dorado Montero stand pre-eminent in the list of Spanish writers on criminology. Bernaldo de Quirós's work on "Modern theories of criminality" is the leading general treatment of the subject in Spain and has won recognition as an authoritative work in the world's literature of criminal science. The second edition, especially revised, was translated under the auspices of the American Institute of Criminal Law and Criminology [1] as the first volume published in its modern criminal science series. The distinguished author is engaged in research work for the *Instituto de Reformas Sociales* (*infra*, p. 120) and has produced numerous interesting and useful monographs on various topics in the field of criminology.

The first treatise or expository presentation of merit of the science of criminology by a Spanish author was published by Dorado.[2] It is interesting to note that this work dealt with criminal anthropology in Italy. Dorado's leading work and probably one of the greatest of Spanish works on criminal law is his "Problems of criminal law" (*supra*, p. 96). The same author has since published several modern books on various subjects in the field of the law. His "Bases for a new penal law"[3] and "New penal methods"[4] attracted much favor-

[1] Bernaldo de Quirós, Constancio. Modern theories of criminality. Translated by Alfonso de Salvio. Boston, Little, Brown and Co., 1911. 249 p.

[2] Dorado Montero, Pedro. La antropología criminal en Italia. Madrid, Rev. de legislación, 1889. 1 v.

[3] Dorado Montero, Pedro. Bases para un nuevo derecho penal. Barcelona, M. Soler, 1902. 201 p.

[4] Dorado Montero, Pedro. Nuevos derroteros penales. Barcelona, M. Soler, 1905. 1 v.

able comment. Mention should likewise be made of his "Criminology and penology"[1] (1906) in which is inserted an earlier study on criminality in Spain during the period of the regency (1885–1902). An original and interesting work is his criminal psychology in the Spanish legislation[2] which gives a broad, learned and philosophical view of criminal psychology in its relation to statutory enactments. This was originally intended only to apply to the penal code but the author was led by his investigations to include all the criminal legislation.

Among other general treatises on the subject of criminal anthropology is the early work of Martínez Ruiz.[3] The first part of the treatise is devoted to a description of the growth and sources of the new science. A more recent work by Carpena[4] on this subject is attracting attention among jurists and students of the science for its elucidation of the cause of crime and its prevention. The "forerunners of criminal science in Spain" by Montes[5] is a study of the delinquent and of the causes of crime and their remedies. A treatise by Aramburu[6] on the new criminal science offers interesting reading. Lombroso, the late eminent Italian criminologist, published an interesting and suggestive article, in 1910, in volume 31 of the Italian criminological review, *Archivio di antropologia criminal*, pages 546–551, on the cause of Spanish criminality. He describes Spain as a "classic" land for the study of criminality.

Attention should be called to the works of two other foreigners who have made valuable contributions to the study of criminality in Spain. Agusto Bosco,[7] in his "Criminality in various countries of Europe," devotes an entire chapter to

[1] Dorado Montero, Pedro. De criminología y penalogía. Madrid, Rodríguez Serra, 1906. 224 p.

[2] Dorado y Montero, Pedro. La psicología criminal en nuestro derecho legislado . . . 2d ed. Madrid, Hijos de Reus, 1911. 358 p.

[3] Martínez Ruiz, José. La sociología criminal. Madrid, Ricardo Fé, 1889. 210 p.

[4] Carpena, Fructuoso. Antropología criminal. Madrid, Fernando Fé, 1909. 522 p.

[5] Montes, J. Gerónimo. Precursores de la ciencia penal en España. Madrid, V. Suarez, 1911. 745 p.

[6] Aramburu y Zuloaga, Feliz de. La nueva ciencia penal. Madrid, Fé, 1887. 377 p.

[7] Bosco, Augusto. La delinquenza in vari stati di Europa. Rome, R. Accademia dei Lincei, 1903. 282 p.

Spain. Ferri [1] in his works on criminology also discusses briefly the conditions in Spain.

Numerous useful discussions of specific aspects and studies of criminality have been made by Bernaldo de Quirós, Llanas Aguilaniedo, Ruiz (Max Bembo), José Varón y Caballero, Gil Maestre, and the well known Rafael Salillas. These monographs, while of considerable interest and value, are believed to be beyond the scope of the present guide.

Reforms in the penitentiary system and the prison laws of Spain have been treated of by several writers. Cadalso [2] in 1893 published a work on prisons. Lastres' [3] work on the same subject is several years older. In 1901 Albó [4] prepared in pamphlet form a sketch for the reformation of the existing penitentiary law. Concepción Arenal (*supra*, p. 26), one of the few women jurists who have won an international reputation, has been most active in reforms of criminal law and penology. In 1901 she published a four-volume collection of discussions, etc., on public charities and prisons.[5]

A magazine (*Revista penitenciaria*) devoted to criminal reforms was edited from 1904 until 1909 in Madrid by Salillas. Within its files may be found numerous valuable contributions to the literature of the reform movement in criminal law.

The distinguished legal historian and philosopher, Hinojosa,[6] has enriched the literature of this field by his work on "the

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[1] Ferri, Enr. Sociologia criminale. 4th ed. Torino, fratelli Bocca, 1900. 999 p.

Same. L'omicidio nell' antropologia criminale. Torino, Bocca, 1895. 2 v.

[2] Cadalso y Manzano, Fernando. Estudios penitenciarios. Presidios españoles. Escuelas clásica y positiva y colonias penales. Madrid, Góngora, 1893. 2 v.

[Second vol. entitled "Principios de colonización y colonias penales."]

[3] Lastres, Francisco. Estudios penitenciarios. Madrid, Nuñez, 1887. 236 p.

[4] Albó y Marti, Ramón. Apuntes para un proyecto de reforma penitenciaria. Barcelona, Miguel Borros, 1901. Pamphlet.

[5] Arenal, Concepción. Obras sobre beneficiencia y prisiones. Madrid, V. Suárez, 1901. 4 v.

[6] Hinojosa, Eduardo. Influencia que tuvieron en el derecho público de su patria y particularmente en el derecho penal, los filosóficos y teólogos españoles anteriores a nuestro siglo. Madrid, Huérfanos, 1890. 199 p.

influences which the Spanish philosophies and theologists anterior to our century have had on public law of the country and particularly on criminal law."

CONSTITUTIONAL LAW

Derecho político as employed in Spain has two significations,—a broad meaning equivalent to political science in general, and a restricted or narrow one of constitutional law. Under the title of political law, authors frequently discuss merely constitutional law, with occasional digressions into political science.

The first constitution of Spain, excepting the French *Constitution du Bayone* in 1808, was framed during the enforced absence of Ferdinand VII, in 1810, and promulgated in 1812. Since 1812 not less than six distinct constitutions have been adopted in the Peninsula in addition to various renewals, amendments and abrogations. The present constitution was adopted in 1876, but has been amended through the efforts of the Liberal party since 1881 by the addition of provisions for universal suffrage for men, trial by jury, liberty of the press, etc. There are several English translations of this document. Walton includes it in his "Civil law in Spain (*supra*, p. 36)." Professor Dodd [1] in his collection of the fundamental laws of the most important countries of the world presents a translation with historical and bibliographic notes (volume II, pp. 197–216).

A recent (1913) edition of the constitution, copiously annotated by González,[2] is well recommended. Prof. Dodd used as the basis of his translation the current edition of Góngora which also includes supplementary laws. The last edition [3] appeared in 1910. The texts of all the Spanish constitutions may be found in a two volume collection of constitutions edited, in 1886, by a group of lawyers [4] in Madrid.

[1] Dodd, Walter Fairleigh. Modern constitutions. Chicago, Univ. of Chicago Press, 1909. 2 v.

[2] González, Adolfo. Constitución de la monarquía española. Madrid, V. Suarez, 1913. 120 p.

[3] Constitución política de la monarquía espñola y leyes complementarios por la redacción de Revista de los tribunales. 7th ed. Madrid, Góngora, 1910. 224 p.

[4] Constituciones de España y de las demás naciones de Europa . . . por una sociedad de iurisconsultos. Mádrid, Escribano y Echevarría, 1886. 2 v.

The government publishes officially from time to time collections of political documents including all the constitutions, various amendments and other papers, for the practical use of the Spanish parliament.

General treatises on *derecho político*, as has been observed, sometimes extend beyond the field of constitutional law. Among such works, attention may be called to those of Colmeiro,[1] the more recent treatise of Gil Robles[2] and Prof. Santamaría de Paredes'[3] *Curso de derecho político*. The last work (8th ed., 1909), while general in scope, is more especially useful for its sketch of Spanish constitutional history.

The leading and most authoritative contemporary writer in the field of *derecho político* is Prof. Posada, of the University of Madrid. He has made contributions to practically every branch of the subject. In 1884 he published a treatise on the principles of public law[4] which was intended to serve as an introduction or outline of a greater undertaking. In pursuance of his plan there have appeared a two-volume treatise on the fundamental (*político*), or constitutional, law[5] (revised 1914); a two-volume treatise on administrative law (*infra*, p. 112), published in 1894; a brief guide[6] for the study of constitutional law, containing the principal constitutional documents of the world (1894); and finally, in 1908, a short treatise[7] comparing the different methods of teaching political science, recent changes in the law and various methods of

[1] Colmeiro, Manuel. Elementos del derecho político y administrativo de España. 7th ed. Madrid, Viuda é hija de Fuentenebro, 1887. 312 p.

Same. Curso de derecho político según la historia de León y Castilla. Madrid, F. Martínez García, 1873. 618 p.

[2] Gil Robles, Enrique. Tratado de derecho político según los principios de la filosofía y el derecho cristianos. Salamanca, Torre, 1899–1902. 2 v.

[3] Santamaría de Paredes, Vicente. Curso de derecho-político . . . con un prólogo de Eduardo Pérez Pujol. 8th ed. Madrid, Ricardo Fé, 1909. 832 p.

[4] Posada, Adolfo. Principios de derecho político: introducción. Madrid, Murillo, 1884. 350 p.

[5] Posada, Adolfo. Tratado de derecho político. 2d ed. Madrid, V. Suarez, 1914. 2 v.

[6] Posada, Adolfo. Guía para el estudio y aplicación del derecho constitucional de Europa y América. Madrid, V. Suarez, 1894. 280 p.

[7] Posada, Adolfo. Derecho político comparado. Madrid, V. Suarez, 1906. 251 p.

comparing the law as employed by noted scientists. It may be added that in 1914 Prof. Posada[1] prepared a work on Spanish public law for the series *Das öffentliche Recht der Gegenwart.*

J. L. M. Curry,[2] late Minister of the United States to Spain, prepared in 1889 an interesting discussion or sketch of the development and history of constitutional government in Spain.

Prof. Torres Campos[3] the same year published in German a brief memoir on the public and constitutional law of Spain which also appears in the fourth volume (1st half, 8th part) of the *Handbuch des öffentlichen Rechts.* The German Gmelin,[4] in 1905, made a study of the constitutional development of Spain. Professor Giner de los Rios in his *Estudios* (*supra*, p. 23) offers a few interesting monographs covering topics in the field of *derecho político.* An important work on self-government and the doctrinarian monarchy, by Azcárate,[5] published in 1877, may also be noted.

An interesting treatise by Pons[6] presents an extended discussion of the organization and powers of the national congress, or parliament (*Cortes*), according to the different Spanish constitutions.

ADMINISTRATIVE LAW

The texts of all the administrative laws of Spain, annotated briefly with decisions of the supreme court, have been compiled in one handy volume by Medina and Marañón.[7] Among

[1] Posada, Adolfo. Spanisches staatsrecht. Tubingen, Siebeck, 1914. 246 p.

[2] Curry, J. L. M. Constitutional government in Spain. New York, Harper and Bros., 1889. 222 p.

[3] Torres Campos, Manuel. Das staatsrecht des kônigreichs Spanien. Freiburg, J. C. B. Mohr, 1889. 125 p.

[4] Gmelin, H. Studien zur spanischen verfassungsgeschichte des neunzehnten jahrhunderts. Stuttgart, F. Enke, 1905. 267 p.

[5] Azcárate, Gumersindo de. El *self-government* y la monarquía doctrinaria. Madrid, Peña, 1877. 299 p.

[6] Pons y Umbert, Adolfo. Organización y funcionamiento de las cortes según las constituciones españolas y reglamentación de dicho cuerpo colegislador. Madrid, Hijos de Hernández, 1906. 773 p.

[7] Medina, León and Marañón, Manuel. Leyes administrativas de España. Madrid, Viuda é Hijos de Tello, 1907. 1,400 p.

the laws included are those in regard to industrial and intellectual property, waters, ports, mines, railroads, eminent domain, upkeep of public property, public charities, public works, contentious-administrative courts, etc. This work, like the other collections of the same compilers, is currently used. The publishing house of Góngora in Madrid edits the administrative laws in convenient volumes, keeping them up to date. The most valuable collection of laws relating to Spanish public administration is the *diccionario* of Martínez Alcubilla (*supra*, p. 16). It is indeed a legal encyclopedia, and covers practically every branch of Spanish law. Other useful encyclopedias including all administrative laws are cited under "General works" (*supra*, p. 15).

Reports of court decisions on administrative questions are published separately. Reference has been made to these under "Court reports" (*supra*, p. 12). Since the abolition of the special contentious-administrative court these decisions are handed down by a special chamber (*sala de lo contencioso-administrativo*) of the Supreme Court at Madrid. The special jurisdiction *contencioso-administrativo* and its literature have been referred to under "Civil procedure" (*supra*, p. 88).

The best brief treatise on Spanish administrative law is the work of Santamaría de Paredes [1] which has recently appeared in a seventh edition (1911). The author is a distinguished member of the faculty of law of the University of Madrid. The introduction to the work was written by the jurist Pérez Pujol. A lengthier but older treatise was published by Abella [2] in 1888. Royo Villanova [3] is the author of another useful work on this subject. A brief treatise appeared in 1907 from the pen of Prof. Gascón [4] of the University of Seville. A work of some merit was produced in 1898 by the well-known publicist, Adolfo Posada.[5] Jurisdictional conflicts be-

[1] Santamaría de Paredes, Vicente. Curso de derecho administrativo. 7th ed. Madrid, Española, 1911. 832 p.

[2] Abella y Blave, Fermín. Tratado de derecho administrativo español. Madrid, Administración, 1886–1888. 3 v.

[3] Royo Villanova, Antonio. Elementos de derecho administrativo. Valladolid, Castellana, 1909. 2 v. in 1.

[4] Gascón y Marín, José. Nociones de derecho administrativo y legislación provincial y municipal. Madrid, Hijos de Reus, 1907. 292 p.

[5] Posada, Adolfo. Tratado de derecho administrativo según las teorías filosófica y legislación positiva. Madrid, V. Suarez, 1897–8. 2 v.

tween the executive and judicial powers have been treated in a recent work of Ubierna.[1] A recent (1914) work worthy of note is the collection of studies by Villar,[2] a lawyer of Madrid. Four separate topics in administrative law are discussed.

Translations of various administrative laws in force in the islands of Cuba, Porto Rico, and the Philippines at the time of the Spanish-American War have been made by the Division of customs and insular affairs of the War Department. In many instances the provisions are identical with the laws of Spain. A compilation of laws and decrees dating from September 12, 1870, to December 31, 1896, relating to the civil administration and government of Porto Rico[3] was translated in 1899. There has also been translated the general law of public works of Cuba,[4] regulations for its execution and a collection of laws referring to public works in Porto Rico.[5]

MUNICIPAL AND PROVINCIAL ADMINISTRATION

Municipal customs have played an important rôle in the development of continental legal history. The customary municipal law of Spain has been discussed in a brief work by Costa [6] in collaboration with two other jurists. Abella,[7] in 1877, and Blas,[8] in 1882, published works on provincial and

[1] Ubierna y Eusa, José Antonio. Conflictos jurisdiccionales entre los poderes ejecutivo y judicial. Madrid, R. Velasco, 1911. 371 p.

[2] Villar Grangel, Domingo. Estudios de derecho administrativo. Madrid, Hijos de Reus, 1914. 294 p.

[3] Laws relating to the civil administration and government of the island of Porto Rico. Translated by War Department. Washington, Government Printing Office, 1899. 53 p.

[4] Translation of the general law of public works of the island of Cuba and regulations for its execution . . . Washington, Government Printing Office, 1899. 101 p.

[5] Translation of collection of laws referring to public works in Puerto Rico (1896). By U. S. War Department. Washington, Government Printing Office, 1899. 112 p.

[6] Costa, Joaquin; Pedregal, Manuel and Linares, Gervasio de. Derecho municipal consuetudinario de España. Madrid, Rev. de legislación, 1885. 128 p.

[7] Abella y Blave, Fermín. Derecho administrativo provincial y municipal. Madrid, la Riva, 1877. 6 v.

[8] Blas y Melendo, Andrés. Derecho municipal y provincial. Madrid, Lezcano y Comp., 1882. 354 p.

municipal administrative law, the former in six volumes. The law of municipal justice of 1907 has already been discussed (*supra*, p. 87). Abella [1] has prepared a manual for municipal officials, which is in fact a practical treatise on municipal administration. It has gone through six editions. An interesting discussion of the legislative evolution of local government in Spain from 1812 to 1909 was published by Posada [2] in 1910.

Prof. Gascón y Marín[3] prepared an elementary work on administrative law, with special reference to provinces and municipalities. He followed the outline or plan used in the examination of applicants for secretaryships in the municipal governments. The modern municipality, its powers and duties, is the subject of an interesting work by Rodríguez Martin,[4] a judge of a court of first instance. Administrative questions, such as public order, hygiene, taxes, vagrancy, etc., are discussed. The municipalization of public utilities has been discussed by Gascón y Marín.[5]

Special attention may be directed to the encyclopedia or dictionary, compiled by Aleu (*supra*, p. 16), of all technical terms employed in the administration of municipalities. The work really is an encyclopedia of Spanish law but is designed especially for municipal administrative and judicial officers. The second edition, in eight volumes, was completed in 1911.

The municipal and provincial laws in force in Cuba and in Porto Rico are closely related to the Spanish laws. Translations of both were made in 1899 by the United States War Department.[6]

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[1] Abella y Blave, Fermín. Manual del secretario de ayuntamientos ó tratado teórico-práctico de administración municipal. Madrid, Viuda é hijos de la Riva, 1892. 6th ed. 866 p.

[2] Posada, Adolfo. Evolución legislativa del régimen local en España. 1812 a 1909. Madrid, V. Suarez, 1910. 513 p.

[3] Gascón y Marín, José. Nociones de derecho administrativo y legislación provincial y municipal. Madrid, Hijos de Reus, 1907. 292 p.

[4] Rodríguez Martín, Antonio. El municipio moderno. Madrid, Hijos de Reus, 1907. 294 p.

[5] Gascón y Marín, José. Municipalización de servicios públicos. Madrid, V. Suarez, 1904. 289 p.

[6] Translation of the municipal and provincial laws in force in the island of Cuba. By U. S. War Department, Division of customs and insular affairs. Washington, Government Printing Office, 1899. 71 p.

Translation of the provincial and municipal laws of Puerto Rico. Washington, Government Printing Office, 1899. 58 p.

ELECTIONS

A good book on electoral procedure in Spain was published in 1897 by Andreu.[1] Giralt[2] in 1901 prepared a manual of the electoral legislation. Sanz[3] has published a practical guide and explanation of the application of the act of 1907, which changed the form of electing representatives (*diputados*) to the *Cortes*. The electoral law of 1890 was extended in amended form to the islands of Cuba and Porto Rico. A translation was made of the law,[4] and also of the special law for the election of councilors and deputies in Porto Rico,[5] by the War Department of the United States.

WATERS

The civil code defines the ownership of waters under the heading "Special kinds of property," but the specific laws governing water rights, irrigation and related matters is embodied in a special enactment call the *Ley de aguas* (law of waters). It was first enacted in 1866 and was extended to the Philippines in 1871. In 1879 a new and elaborate law was enacted in the Peninsula, consisting of 15 chapters and some general provisions. This was extended to Porto Rico in 1886, but was never extended to the Philippines. The law for Cuba,[6] extended to Cuba by special decree of Jan. 9, 1891, was translated by the United States War Department in 1900. Franquet,[7] in 1864, published a work on the origin and history of

[1] Andreu y Serra, R. Procedimiento electoral in España. Barcelona, Henrich y Comp., 1897. 1 v.

[2] Giralt y Verdaguer, Joaquin. Manual de la legislación electoral. Barcelona, López, 1901. 1 v.

[3] Sanz y Caminalo, Joaquin. Ley electoral para diputados á cortes y concejales. Madrid, Hijos de Reus, 1908. 124 p.

[4] Adaptation of the electoral law of June 26, 1890 to the islands of Cuba and Porto Rico. Translated by War Department, Division of Customs and Insular Affairs. Washington, Government Printing Office, 1899. 23 p.

[5] Electoral law for the election of councilors and provincial deputies in Porto Rico. Translated by War Department, Division of Customs and Insular Affairs. Washington, Government Printing Office, 1899. 92 p.

[6] The law of waters in force in the island of Cuba. Translated by War Department, Division of Customs and Insular Affairs. Washington, Government Printing Office, 1900. 53 p.

[7] Franquet y Bertan, Cirilo. Ensayo sobre el origen, espíritu y progresos de la legislación de las aguas. Madrid, Ducozcal, 1864. 2 v.

the legislation concerning waters. The author presents the laws governing waters as contained in the ancient codes and in modern legislation. The legislation of present importance commences with the *Ley de aguas* of June 13, 1879. A convenient compilation of this and succeeding laws governing all inland waters, ports, canals, etc. was published by Aleu [1] in 1912. The *Revista de los tribunales* [2] also issues annotated compilations covering the same subjects.

HUNTING AND FISHING LAWS

Spain's bird law was first enacted September 19, 1896. The government moreover became a party, in 1905, to the international agreement for protecting birds useful to agriculture. After the passage of the amending statutes of May, 1902, and July, 1903, Abella [3] issued a new edition of his earlier manual of the hunting laws. The *Revista de los tribunales* [4] recently (1912) published a work on the laws governing hunting and fishing, annotated with the decisions of the courts. Two other useful works may also here be mentioned. The first is a manual of the legislation governing sea fishing by González and Sánchez,[5] and the other a collection of international treaties and agreements concerning fishing and fishing rights compiled by López.[6] The usefulness of the latter work is increased by annual appendices containing the latest agreements.

MINES

Mining law is governed by a special act which has been frequently amended. The first *Ley de minas* (mining law) was

[1] Aleu Cerrera, Manuel. Legislación de aguas, puertos, canales y pantanos. Madrid, Biblioteca "Justicia," 1912. 653 p.

[2] Redacción de la revista de los tribunales. Compilación de la legislación de aguas, canales de riego, etc. 3d ed. Madrid, Góngora, 1902. 512 p.

[3] Abella y Blave, Fermín. Manual de derecho de caza y uso de armas. 3d ed. Madrid, Administración, 1903. 324 p.

[4] Legislación de caza, uso de armas y pesca. Por la Redaccion de la Revista de los tribunales. Madrid, Góngora, 1912. 127 p.

[5] González y Maroto, F., and Sánchez y Jiménez, M. Manual de legislación sobre pesca marítima. Madrid, Asilo de Huérfanos del S. C. de Jesús, 1906. 687 p.

[6] López y Medina, F. Colección de tratados internacionales, ordenanzas y reglamentos de pesca. Madrid, B. Cerrada, 1906. 192 p. 7 app. to 1914.

enacted in 1859 and revised in 1863. During the last half of the nineteenth century a great increase in the industry demanded many reforms. An article descriptive of the mining laws of Spanish countries by one of the present day jurists, Cabello,[1] was read at the meeting of the International Law Association, held in Madrid, October, 1913, and was printed in its reports with an English summary. This interesting article was reviewed and summarized in volume 39 (1913) of the Law magazine and review, pages 83–96. The Spanish mining laws were translated into French by Stevenson[2] in 1911. The law as extended to Cuba[3] by royal decrees of October 10, 1883, and June 27, 1884, was translated by the War Department, with an appendix containing all the decrees issued to 1900. The law in force in the Philippines[4] has also been translated.

Two good compilations of the mining legislation of Spain were made in 1912 by Carrerra[5] and Abella[6] respectively. An extensive work on mining law was published in 1890 by R. and M. Sánchez de Ocaña.[7] It gives the history of the legislation and a collection of the texts of the various laws as well as judicial decisions. The work is well annotated and its appendices extend to 1898. The volume of M. Sánchez de Ocaña[8] appearing in 1905 supplements the preceding compilation. A treatise of some importance was published by Car-

[1] Cabello y Guillén de Toledo, Alfonso. Leyes de minas en las países españoles. With English summary. London, R. Flint, 1913. 38 p.

[2] Stevenson, A. Codes miniers ... Espagne. Paris, Dunod and Pinat, 1911. 141 p.

[3] Translation of the mining law applied to Cuba by royal decrees of ... with appendix containing all provisions issued to date. By War Department, Division of customs and insular affairs. Washington, Government Printing Office, 1900. 95 p.

[4] Translation of the mining law and regulations in force in the Philippines. By War Department, Division of customs and insular affairs. Washington, Government Printing Office, 1900. 78 p.

[5] Carrera, Manuel Aleu. Legislación de minas. Madrid, "Justicia," 1912. 646 p.

[6] Abella y Blave, Fermín. Manual de legislación de minas. 6th ed. Madrid, Administración, 1911. 765 p.

[7] Sánchez de Ocaña, Ramón and Sánchez de Ocaña, Maximo. Legislación minera. Madrid, Enrique Maroto y hermano, 1890. 702 p. 2 app.

[8] Sánchez de Ocaña, Maximo. Nueva legislación minera. Madrid, Hijos de Reus, 1905. 220 p.

bonell[1] in 1906; it contains an account of the legislation from 1868 on, and much practical information. Since 1906 one important statute has been enacted, the act of 1908 establishing a mining council. An encyclopedia of mining law in one volume was published in 1906 by Prats and Hernández Pinteño.[2]

PUBLIC FINANCE

Medina and Marañón[3] have prepared an annotated collection of all the statutes and laws relating to the *Hacienda pública*, or the public treasury, finances, public property, tariffs, taxes, etc., but the usefulness of the collection is impaired by a lack of revision since 1894. A collection of the important statutes relating to the public finances has recently (1913) been published by Vila Serra.[4] A treatise on the public treasury and finances by Villa[5] appeared in 1907. An older treatise (5th ed., 1900) of Piernas[6] enjoyed considerable authority but the second volume is at present out of print. Three well known legal writers[7] published in 1900 a treatise on the accounting system of the Spanish government. The budget, its liquidation, the systems of the national and provincial treasuries, collection of taxes, etc., are some of the topics discussed. The work is especially designed for the information of governmental officials. The experiments of the Spanish government in coinage have been discussed by Henry Charles Lea in an article which appeared in volume 51 (1897) of the Popular science monthly, pages 577–593.

A manual of the tax laws governing the alienation and transmission of property according to the law of 1900, was prepared

[1] Carbonell, J. Tratado de legislación de minas. Madrid, Asilo de Huérfanos del Sogrado Corazón de Jesús, 1906. 564 p.

[2] Prats y García-Clalla, José and Hernández Pinteño, José. Enciclopedia jurídica minera. Madrid, Rev. de legislación. 1095 p. 1906.

[3] Medina, León and Marañón, Manuel. Leyes de hacienda de España. Madrid, Manuel Tello, 1894. 2 v.

[4] Vila Serra, José. Legislación de hacienda pública. Valencia, Impr. del autor, 1913. 714 p.

[5] Villa y Lindemán, Diego. Hacienda pública. Madrid, Hijos de Reus, 1907. 212 p.

[6] Piernas Hurtado, J. Tratado de hacienda pública. 5th ed. Madrid, V. Suarez, 1900. 2 v.

[7] González Cedrón, Antonio; Méndez de Vigo, Leonció and Peral, Florentino Emilio. Nociones generales de contabilidad pública. Madrid, Hijos de Reus, 1900. 915 p.

by Abella,[1] a prolific writer in the field of administrative law. A manual[2] of territorial tax laws has come from the pen of the same editor.

The recent (1913) collection of tariff legislation, with tables for importation and exportation duties, was prepared by the editorial house of Góngora.[3] A translation[4] into English of the customs tariff in force in 1912 is obtainable.

The civil code, in book II and part of book III, contains complete provisions covering real property. In articles 605–608, general rules for the registration of property are found, but the mortgage law (*supra*, p. 60), with its supplementary acts, and the notarial laws (*supra*, p. 89) provide specific requirements for registration of real estate. All the laws, orders and decrees governing the registration of real property in both Spain and the colonies, enacted from January 1, 1874 to December 31, 1882, were published officially in two volumes by the General Director of Registration.[5]

A collection of the laws, ordinances and regulations, adopted by the government of Spain, relating to the disposition of public lands in her colonies was compiled in 1828 by Joseph M. White (*infra*, p. 139). The public land laws in the Philippine Islands, with an historical account up to 1898, were collected by the Forestry Bureau in 1901 (*infra*, p. 139).

POOR LAWS

Spain is a country in which much poverty prevails and the government has had to maintain many public charitable organizations. The editorial house of Góngora issues from time

[1] Abella y Blave, Fermín. Manuel del impuesto de derechos reales y transmisión de bienes. 7th ed. Madrid, Administración, 1911. 271 p.

[2] Abella y Blave, Fermín. Manual de la contribución territorial. 7th ed. Madrid, Administración, 1910. 767 p.

[3] Legislación de aduanas; aranceles de importación y exportación para la Peninsula é islas Barleares. Madrid, Góngora, 1913. 300 p.

[4] Translation of the new customs tariff of Spain with comparison of duties leviable prior thereto. London, H. M. Stat. Darling, 1912. 37 p.

[5] Colección oficial de leyes, reales decretos . . . que se han dictado referentes al registro de la propiedad inmueble y de los demás derechos reales desde el 1° de enero de 1874 hasta el 31 de diciembre 1882 . . . Por la dirección general de los registros civil de la propiedad . . . Madrid, Ministerio de Gracia y Justicia, 1882–1884. 2 v.

to time useful collections of the legislation in this field. A complete manual including all the laws, ordinances and regulations of *beneficencia* (poor laws) was published in 1912 by Abella.[1]

LABOR LEGISLATION

Spain, finally awakened to the need of modern labor legislation by numerous strikes and a general unrest of the working classes during the last years of the nineteenth century, is now in the midst of a rapid and wonderful development in the field of social legislation. The inactivity of the country in industrial pursuits and the fact that a large proportion of its population is engaged in agriculture have rendered the enactment of laws perhaps less imperative than has been the case in other countries of western Europe. Yet, since 1899, the practical beginning of the progressive legislation in Spain, a considerable advance has been made.

Through the initiative of Moret, the Minister of the Interior, who recognized the inadequacy of the provisions of the civil code, the *Comisión de reformas sociales* was, in 1883, established by the government to investigate labor conditions in Spain. One of the most important questions considered by the commission was that of compensation for industrial accidents. They produced a program of legislation, June 7, 1887, but it was thirteen years before a statute based upon it was enacted. The commission was succeeded by the present Institute of Social Reforms (*Instituto de reformas sociales*), established by royal decree of April 23, 1903. The purpose of the Institute is to study the labor problem in Spain and elsewhere, compile statistics, inspect the condition of workers, and make recommendations for new legislation. It is composed of thirty active members, eighteen chosen by the government, and twelve elected, six by the employers and six by the laborers. In addition, there are four *ex officio* members. Leading sociologists and representatives of all creeds and political parties are included in the commission. The excellent service rendered and the legislation secured—of vital importance for the protection of the laborer—reflect much credit upon the Institute. In 1912 it published a con-

[1] Abella y Blave, Fermín. Manual de beneficiencia. Madrid, Administración, 1912. 511 p.

densed report,[1] discussing its organization and operations, as one of its bulletins, which in general comprise the best literature on labor legislation in Spain.

Labor conditions in Spain and the legislation up to 1910 are discussed in the valuable French work of Marvaud[2] on the social question in Spain. A short account of Spanish labor legislation since 1899 was published in volume 5 of the American political science review (1911), pages 249–253, by Clarence Perkins, and an article on the labor laws then in force by Dr. Simancas, of Madrid, appeared two years previously in the journal of the Belgian Institute of Comparative Law (vol. 2, *Revue de l'Institut de droit comparé* (1909), 86–95). References to foreign legislation are frequently made by way of comparison. Probably the best general description and condensation of the social labor legislation is the section by Posada in the work *Derecho usual* (supra, p. 18).

There are several collections of the texts of the labor laws conveniently annotated. The latest (1914) was compiled by Medina Fernández,[3] the prosecuting or State's attorney in the *Audencia* of Valladolid. The work includes all the legislation, as well as forms for labor contracts and an explanatory introduction. The *Revista de los tribunales*[4] publishes complete and useful collections of the labor laws, annotated with decisions of the Supreme Court and some foreign courts. The work was considerably enlarged in the 1913 edition. The collection published by the Institute of Social Reforms,[5] in 1905, is kept up to date by special annual appendices. The Institute also publishes projects of proposed laws as, for instance, in 1911 a draft law governing the labor contract,[6]

[1] Memoria referente a la organización y funcionamiento del instituto de reformas sociales. Madrid, Suc. de M. Minuesa de los Rios, 1912. 103 p.

[2] Marvaud, Angel. La question sociale en Espagne. Paris, F. Alcan, 1910. 475 p.

[3] Medina Fernández, Marino. Compilación codificada de la legislación obrera en España. Valladolid, Cuesta, 1914. 418 p.

[4] Revista de los tribunales. Legislación obrera . . . concordada y anotada con la jurisprudencia española y extranjera. 3rd ed. Madrid, Góngora, 1913. 680 p.

[5] Instituto de reformas sociales. Legislación del trabajo. Madrid, Suc. de M. Minuesa de los Rios, 1905. 358 p.

[6] Instituto de reformas sociales. Proyecto de ley sobre el contrato de trabajo. Madrid, Minuesa de los Ríos, 1911. 528 p.

and in 1913 the draft of a law governing the hours of labor of clerks in mercantile establishments.[1] The manual of Vila Serra[2] is currently used.

The recent (1914) treatise of Prof. Gutierrez-Gamero[3] of the Industrial School of Madrid, although brief, discusses in a clear manner the social movement in Spain, current legislation, organizations of labor and capital, strikes and finally labor contracts. Two monographs of Buylla,[4] "the workman and his laws" and "the protection of the workman," should not be omitted. The international development of labor legislation has been discussed by a lawyer, Sangro,[5] who is also associate editor of the Spanish edition of the publications of the international association for the legal protection of laborers. Sangro's[6] lectures on the intervention of the state and the municipality in labor questions, delivered before a religious convention in Barcelona in 1912, have attracted much attention. He treats the subject rather theoretically, citing, however, extracts of existing laws.

The Spanish edition of the publication of the International Association for the legal protection of laborers was inaugurated in 1907 under the editorship of Dato, Buylla, Sangro, Oyuelos, and others. Its issues are irregular, thirty-three numbers having appeared up to June, 1914. These contain numerous articles of referential value. In regard to protective laws for mine laborers, the Institute of Social Reforms[7] published

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[1] Instituto de reformas sociales. Preparación de un projecto de ley regulando la jornada de trabajo de las personas empleadas en los establecimientos mercantiles. Madrid, Minuesa de los Ríos, 1913. 192 p. Contains foreign legislation and bibliography.

[2] Vila Serra, José. Manual de la legislación del trabajo. Valencia, Impr. del autor, 1910. 638 p.

[3] Gutierrez-Gamero, Francisco. Legislación industrial. Asociaciones, huelgas, contrato de trabajo. Madrid, F. Moliner, 1914. 286 p.

[4] Buylla y Alegre, Adolfo. El obrero y las leyes. Madrid, Rev. de legislación, 1905. 373 p.

Buylla y Algre, Adolfo. La protección del obrero. Madrid, V. Suarez, 1910. 258 p.

[5] Sangro y Ros de Olano, Pedro . . . La evolución internacional del derecho obrero. Madrid, V. Suarez, 1912. 396 p.

[6] Sangro y Ros de Olano, Pedro. La intervención del estado y del municipio en cuestiones obreras . . . Barcelona, P. Ortega, 1911. 152 p.

[7] Instituto de Reformas Sociales. Información sobre el trabajo en los minos. Madrid, Minuesa de los Ríos, 1910. 103 p.

some statistical information in 1910, and Sanz, Sallilas, and Puyol,[1] a committee appointed by the Institute, made a thorough and complete report of the mines in Vizcaya in 1904.

WORKMEN'S INSURANCE AND EMPLOYERS' LIABILITY

Only the first steps have as yet been made by Spain in the field of social insurance. Two important measures have been passed—the compensation act of January 30, 1900, and the act of February 27, 1908, establishing a national institute for old-age pensions.

The law of January 30, 1900 ("law in regard to industrial accidents") is the workmen's compensation act of Spain. Before its passage the compensation of workmen for industrial accidents was based upon the criminal and civil liability provisions of the civil code, articles 1902–1910, which provisions were derived from the Roman legal ideas of responsibility for the consequences of one's own acts or for the acts of one's agent. Its legislative history dates from the draft project formulated by the Commission of Social Reforms, June 7, 1887. This plan was referred to a committee of the Senate which returned it to the Commission with instructions for further elaboration. On May 2, 1891, a revised draft was presented, but it was not until June 5, 1894, that there was introduced into the *Cortes* a bill in accordance with the commission's recommendations. The bill met with strong opposition and failed to become law. Finally on December 2, 1899, the bill for the present act was introduced and became law on January 30, 1900. This act establishes the main principles but hardly enters into details of procedure and administration. The Government was directed to publish all necessary regulations within six months. The legislation now in force in addition to the law of January 30, 1900, includes the decree of July 28, 1900, forming a complete set of regulations; the decree of August 27, 1900, in regard to accident insurance companies; and the decrees of March 26, and July 2, 1902, extending the application of the law to the War and Navy departments, respectively. In addition, a number of less important royal orders (*ordenes reales*) interpreting certain articles of the law

[1] Sanz y Escartin, Eduardo; Sallillas, Rafael and Puyol y Alonso, Julio. Minas de Vizcaya. Madrid, Minuesa de los Ríos, 1904. 331 p.

or modifying preceding decrees have been promulgated from time to time.

A complete analysis of the law of 1900 and of all decrees and orders up to the close of 1910 appeared in the twenty-fourth annual report of the United States Commissioner of Labor, vol. II, pages 2321–2376. The entire question of workmen's insurance in Spain is discussed, and a translation of the act of 1900 is included at pages 2705–2707 of the same volume. This law is also described in detail by L. Léger in the *Annales des sciences politiques*, volume 21 (1906), pages 494–515, and by Deléarde in the fifteenth volume of the *Bulletin du Congrès international des accidents du travail* (1904), pages 56–94.

The law provides rates of compensation in detail for all degrees of injuries to employees arising out of or in the course of employment, unless caused by *vis major* and forces extraneous to the employment in which the injury occurs. There are also qualifications relating to fraud, imprudence or negligence of the workman. It is applicable to employees in government works, such as arsenals, ammunition works, etc., and the government, including state, provincial and communal administration, is treated like a private employer for the purposes of the law.

It is interesting to note that the compensation act of 1900 contains no special provisions for agricultural laborers and is not applicable to them except where machinery propelled by steam, etc., is employed, despite the fact that Spain is mainly an agricultural country. The *Instituto de Reformas Sociales* has published a proposed project of a special compensation act for this class of workmen. It is probable that in the future the new legislation will follow this line of division.

Employers are not compelled to insure against accidents to their employees, nor is there required a guaranty fund from which payment can be made to the injured parties under the compensation act. Hence, in case the employer becomes insolvent the law can have little effect. The Government, however, endeavors to stimulate voluntary insurance on the part of employers by offering them an opportunity of relieving themselves of liability by insuring in certain casualty companies. The employer must bear the expense of the insurance and the amounts paid to the injured employees are carefully observed to see that they are not less than those allowed by

law. Such casualty companies are under the strict supervision of the Government. They are regulated by the royal decree of August 27, 1900, and orders of October 16, and November 10, 1900. The decree of August 27, 1900, is translated in the "Commercial Laws of the World" series (*supra*, p. 65), volume XXXII, pages 279–281.

The compensation of workmen for industrial accidents has been discussed by numerous law writers. The statute is so recent and changes are being made so often that the latest work is the most useful. An annotated text of the workman's compensation act, with all amendments, is included in the general collection of labor laws (*supra*, p. 121). A good manual of the act with its supplementary laws appeared in 1911.[1] This contains also the Sunday rest law (*Descanso dominical*, *infra*, p. 129) of 1904 with its amendments. The annotated collections of Catalá,[2] containing the compensation act, the laws for insurance against accidents, wages, industrial courts and regulations for mine labor, may be recommended. The decisions on the workmen's compensation act were published in 1906 by the Institute of Social Reforms.[3] Two appendices carry the work to date (1914).

Directly following the promulgation of the compensation act several treatises appeared. Among these may be mentioned the works of Estasén,[4] Aumatell Tusquets,[5] and González Rebollar,[6] all of practically equal merit. Each contains

[1] Manual de accidentes del trabajo, protección á la infancia y descanso dominical . . . por Justia. Madrid, Biblioteca "Justicia", 1911. 419 p.

[2] Catalá y Gavilá, Juan Bautista. Legislación obrera . . . con todas las disposiciones legales . . . jurisprudencia, etc. Madrid, Administración, 1911. 382 p.

[3] Instituto do reformas sociales. Jurisprudencia de los tribunales en materia de accidentes del trabajo. Madrid, Minuesa de los Ríos, 1906. 217 p. 2 app.

[4] Estasén, Pedro. Los accidentes del trabajo y el seguro de accidentes. Madrid, Hijos de Reus, 1903. 638 p.

[5] Aumatell Tusquets, Francisco. Los accidentes del trabajo. Estudio de la ley de 30 de enero, 1900 y . . . complementarias . . . seguido de un sucinto examen comparativo de la legislación extranjera. Barcelona, Penella y Bosch, 1903. 298 p.

[6] González Rebollar, Hipólito. Ley de accidentes del trabajo. Estudios crítico de la ley española de 30 de enero de 1900 . . . comparades con las principales legislaciones extranjeros . . . Salamanca, Calón, á cargo de A. Iglesias, 1903. 506 p.

the Spanish legislation up to 1903 and practically covers the same ground. A more recent work is the short commentary of Nido,[1] annotated with the decisions of the Supreme Court. The practical use of the work is enhanced by full and complete forms for the drawing up of necessary legal papers. Probably the most useful and important treatise on the subject is that published by Ricardo Oyuelos,[2] a recognized authority. This contains, in addition to the doctrinal statements, the texts of the legislation, judicial decisions, as well as foreign legislation for comparative purposes. The publication of his supplementary work, "Code of social reforms,"[3] extends the legislation to 1913. The latter is merely a collection of the statutes and decisions in force in 1912.

The compensation act has not proven entirely satisfactory. The movement for revision began in 1904 on the initiative of the labor delegates to the Institute of Social Reforms. On June 28, 1907, the Institute completed a draft of a proposed new bill and this bill was introduced in the *Cortes*, practically without change, by the Minister of the Interior July 16, 1910. It failed to become a law.

The subject of social insurance has been covered in brief form in a recent (1913) treatise of López Nuñez.[4] It has received high commendation. Insurance for labor accidents and old age, as well as savings' banks, fraternal organizations, personal risks, etc., are some of the matters discussed. The *Instituto Nacional de Previsión* and the laws governing it are explained.

Sickness insurance of workmen is comparatively new in Spain. The progress made so far is due to private or cooperative efforts, without any interference, assistance, or regulation by the government. The existing institutions for medical or financial assistance during illness, which are organized more or less upon an insurance basis, may be classified in

[1] Nido y Torres, Manuel del. Ley de accidentes del trabajo. Comentada . . . Sevilla, Escuelas profesionales de artes y ofícios, 1911. 265 p.

[2] Oyuelos, Ricardo. Tratado de legislación y jurisprudencia de accidentes del trabajo. 2d ed. Madrid, R. Rojas, 1906. 642 p.

[3] Oyuelos, Ricardo. Código de reformas sociales. Colección de las leyes y de la jurisprudencia vigentes. Madrid, Scaevola, 1913. 261 p.

[4] López Nuñez, Alvaro. Lecciones elementales de previsión. Madrid, Suc. de Minuesa de los Rios, 1913. 245 p.

three groups: (1) The commercial sickness insurance companies; (2) the mutual sick benefit societies; and (3) the special funds of charitable organizations.

The system of governmental pensions to military and civil employees is highly developed in Spain. Nevertheless, little had been done in the field of old-age and permanent injury insurance for workmen until the National Institute for Old-Age Insurance was established by the law of February 28, 1908, although there had been great need for governmental assistance for some time. The Institute is endowed by the government and its purpose is to stimulate the popular interest in savings, in insurance and especially in old-age insurance as well as to encourage other local institutions of the same type. Practically, the operations consist in selling old-age pensions or deferred annuities to individuals of the working classes. The voluntary character of the insurance is the essential feature of the system, and the employers are not required to make any contributions to the fund. The law of February 27, 1908 and succeeding laws for the guidance of the Institute are included in the collection of mutual and old-age insurance laws published recently by the *Revista de los tribunales*.[1]

INDUSTRIAL COURTS AND ARBITRATION COMMISSIONS

Industrial courts were established by the law of May 19, 1908 and the locations of the individual courts were fixed by the law of October 20, 1908. Some changes were made by the law of July 22, 1912. These courts are composed of a presiding judge, three jurors and an alternate chosen by the interested workmen from a list presented by the employers, and the same number chosen by the employers from a list presented by the workmen. The court thus constituted has jurisdiction over differences between employers and employed in matters concerning the nonfulfillment or annulment of contracts to provide workmen, contracts to work, apprenticeship agreements, and over differences regarding the application of the workmen's compensation act. Appeal from the decision of this court lies to a second court composed of a presiding

[1] Legislación de seguros, mutualidad y previsión con tablas, modelos . . . por la redacción de la Revista de los tribunales. Madrid, Góngora, 1912. 720 p.

judge, seven jurors and two alternates chosen from the employers, and the same number chosen from the employees. The complete text of the law of May 19, 1908 was published in volume 4 (1908) of the *Boletin* of the Institute of Social Reforms, pages 1278–1287. A brief commentary of the law was published by López[1] in 1909. A discussion of industrial courts by Puig Martínez and Mascarell[2] was published in 1909. Labor accidents are also included in the work.

On the same date a law was passed establishing councils of conciliation and industrial arbitration. A labor dispute must be presented to the local council or *junta* a certain length of time before a strike is called, and an attempt is made to settle the trouble by arbitration. Compulsory arbitration, however, is not yet provided for and the *juntas* are not required to come to a final settlement. A law dealing with strikes and unions and recognizing the right of employers to organize and employed to organize and strike was passed, January 27, 1909, through the efforts of Prime Minister Maura. This law makes all strike leaders (considering as such all officers in unions as well as those who actually arouse the workmen by writings or speeches) responsible for illegal acts of the strikers. The inciters of an illegal act receive the maximum penalties, while only the minimum is imposed on those actually committing the act. Strict rules for advance notices of impending strikes, etc., are included. This law has been severely criticized by many of the republicans and socialists on the ground that it tends to make a successful strike extremely difficult.

LABOR ORGANIZATIONS

A history of the development of labor organizations in Spain since the twelfth century was prepared by Uña[3] in 1899. The Ateneo of Madrid rewarded the author with a monetary prize. The German writer, Kulemann,[4] in his recent (1913)

[1] López, Francisco R. Ley de tribunales industriales de 19 de mayo de 1908 y la legislación del trabajo. Almeria, El Triunfo, 1909. 454 p.

[2] Puig Martínez, César and Mascarell Llacer, Larazo. Tribunales industriales. Accidentes del trabajo. Valencia, F. Sempere y Comp., 1909. 294 p.

[3] Uña y Sarthou, Juan. Las asociaciones obreras en España. Madrid, G. Juste, 1900. 374 p.

[4] Kulemann, W. Die Berufsvereine. Vol. 5. Berlin, Berlag von L. Simion 1913. pp. 393–412.

work, *Die Berufsvereine*, devotes a section to labor associations in Spain. The section is recommended by the officials of the Institute of Social Reforms. Reference may be also made to the chapter of the treatise of Gutierrez-Gamero (*supra*, p. 122) covering this subject.

MISCELLANEOUS LABOR LAWS

A law to protect women and children in all industrial and commercial establishments, except agricultural labor and work done at home, was passed March 13, 1900. Emile Chauvet[1] discussed this law in his work on the legal protection of laborers in Spain. The law forbids the employment of children under ten years of age except in some cases where the child can read and write, and limits the working hours for children under 14 years to six in industrial and eight in commercial establishments. In general it limits to eleven hours a day the labor of all persons under the protection of the law. The provisions relating to women employees previous to, during, and immediately following, maternity are greatly amplified by the law of January 8, 1907. By royal decree of January 25, 1908, some changes were made in the general law and a complete list of employments forbidden to women and minors was published. In addition, three statutes (July 26, 1878; July 23, 1903; and August 12, 1904) designed to protect children may be noted. López Nuñez[2] has published the best treatise on the protection of children. It emphasizes health and moral problems.

Another important step in the industrial laws of Spain was the Sunday rest law (*Descanso dominical*) of March 3, 1904. No law has as yet been passed to limit the length of a day's work for artisans, but in 1902 a decree of the Minister of Finance fixed eight hours as the day's work in the state mines and factories, with provisions for payment for overtime.

Numerous other laws have been enacted in the field of social legislation, such as those governing apprenticeship, cooperation and emigration. Some little advance has been made

[1] Chauvet, Emile. La protection légale des travailleurs en Espagne. Paris, Soc. nouvelle de librairie (G. Bellins), 1903. 132 p.

[2] López Nuñez, Alvaro. La protección de la infancia en España. Madrid, E. Arias, 1908. 399 p.

in technical and labor education, and in Valencia and Barcelona model homes for workmen were established, in 1914. The Institute of Social Reforms [1] published in 1910 a second edition of a collection of notes and bases for the draft of a law for workmen's housing. Reference has already been made (*supra*, p. 122) to the recent draft of a law governing the hours of employment of clerks in mercantile establishments. One of the most recent projects is the proposed law prohibiting all night work in bakeries.[2]

INTERNATIONAL LAW

PUBLIC INTERNATIONAL LAW

While works on public international law bear only a slight relation to Spanish municipal law, nevertheless many of them contain data on the international legal relations of Spain, and for that reason the most important works in this field may appropriately be mentioned.

The treaties of peace between Spain and other countries since the year 1590 are readily accessible. Abreu's [3] compilation of treaties covering the years from 1590 to 1700, in twelve volumes, was published during the middle of the eighteenth century. The treaties from 1700 to 1843 were collected by Cantillo [4] in one large volume, and those from 1842 to 1868 by Janer.[5] These were all published under the direction of the Department of State (*Ministerio del Estado*). The texts of the treaties from 1834 to 1907 are printed in Olivart's [6] collec-

[1] Instituto de reformas sociales. Preparación de las bases para un proyecto de ley de casas para obreros casas baratas. 2d ed. Madrid, Suc. de M. Minuesa de los Ríos, 1910. 2 v.

[2] Instituto de reformas sociales. Preparación de las bases para un proyecto de ley prohibiendo el trabajo nocturno en la industria de la panificación. Madrid, Suc. de M. Minuesa de los Ríos, 1913. 287 p.

[3] Abreu y Bertodano, José Antonio de. Colección de los tratados de paz . . . Madrid, D. Peralta, H. Martin and J. de Zuñiga, 1740–1752. 12 v.

[4] Cantillo, Alejandro del. Tratados, convenios y declaraciones de paz y comercio. Madrid, Alegría y Charlain, 1843. 908 p.

[5] Janer, Florencio. Tratados de España, documentos internationales . . . Madrid, M. Ginesta, 1869. 550 p.

[6] Olivart, Marqués de. Colección de tratados, convenios, y documentos internacionales. . . . Madrid, Progreso (also Rev. de derecho int. y polit. exterior) 1890–1908. 17 v.

tion of treaties, agreements and other international documents to which Spain has been a party. Documents since 1908 may be found in the periodical of international law edited by the same publicist (*infra*, p. 133). A fragmentary collection[1] of treaties was published by the government in 1801, in three volumes. The treaties concluded between the United States and Spain are printed in Malloy's "Treaties, conventions," etc., 1910, II, pages 1640–1723.

Labra,[2] in his work on the Institute of International Law, includes (pp. 179–187) a bibliography of modern Spanish works on international and public law. Olivart[3] compiled a general bibliography of international law which is really a catalogue of his former private library, now owned by Harvard University.

Although in recent years Spain has produced no great works or treatises on international law, her early writers, especially those of the sixteenth century, were preeminent among the world's great jurists and international lawyers. Their works are still cited. Francisco de Vitoria in his *Relectiones theologicae* (*supra*, p. 20) discusses various questions relating to rights of war. The influence of Vitoria is discussed at length in the historical sketch of "Spanish jurists and the science of the law of nations" by Nys in the 1912 *Revue de droit international et de legislation compareé*, pages 360–387, 494–524, 614–642. The article presents an account of the early Spanish international lawyers up to the sixteenth century. The important place of Vitoria in the history of international law is also attested by a recent monograph published by Abad.[4] Soto[5] in his work, *De justitia et jure*, takes up the questions of his day and defends Charles V in some of his policies. A Jesuit, Suárez, in his *De legibus ac Deo legislatore* (*supra*, p. 20) deals with the law of races in general.

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[1] Colección de los tratados de paz, alianza, comercio, etc. Madrid, Real, 1796–1801. 3 v.

[2] Labra y Cadrana, Rafael M. de. El instituto de derecho internacional. Madrid, Alfredo Alonso, 1907. 574 p.

[3] Olivart, Marqués de. Bibliographie du droit international. 2d ed. Paris, A. Pedone, 1905–1910. 1,280 p.

[4] Abad y Cavia, F. El dominico español Fray Francisco de Vitoria y los principios modernos sobre el derecho de la guerra. Madrid, Hijos de R. Alvarez, 1911. 54 p.

[5] Soto, Domingo. De justitia et jure. Salamanca, Joannes María y Gerranova, 1566. 895 p.

An early work in the literature of international law, the accessibility of which has recently been enhanced by its translation into English, is the treatise by Baltasar de Ayala [1] on the rights of war and military discipline. Ayala occupied a position somewhat analogous to that of Judge Advocate General to the armies of Philip II of Spain. The recent English edition under the auspices of the Carnegie Institute has brought to its service, as editor, the late John Westlake, who, in a brilliant introduction, contributed to the work one of his last literary efforts.

Reference may also be made to three works of the eighteenth century. In 1746 Abreu [2] published a legal-political treatise on prize law. The work was twice translated into French and enjoyed considerable authority. A work by Olmeda,[3] "the elements of the public law of peace and war" is not without some interest at the present time. A history of international law was published in 1776 by Marín,[4] who is possibly more profound than Almeda.

It is worthy of note that the most original Spanish work in the field of international law, published during the nineteenth century, came from the pen of a woman, Concepción Arenal.[5] The work has been criticized as being somewhat sentimental and theoretical, but its originality and value have never been doubted. The leading treatise of the nineteenth century, a work of considerable reputation to-day, was published by Riquelme [6] in 1849. Landa's [7] work on the laws of war from

[1] Ayala, Baltasar de. De jure et officiis belli. Madrid, H. Ortega y Hdredes Harra, 1793. 383 p.
Same. Classics of International law. Ayala. Trans. by J. B. Bate. Edited by John Westlake. Washington, Carnegie Institute, 1912. 2 v.

[2] Abreu y Bertodano, Féliz José. Tratado jurídico político sobre las presas del mar. Cadiz, Real de Marina, 1746. 335 p.

[3] Olmeda y León, José. Elementos del derecho público de la paz y de la guerra. Madrid, Viuda de Manuel Fernández, 1771. 2 v.

[4] Marín y Mendoza, Joaquin. Historia del derecho natural y de gentes. Madrid, 1776.

[5] Arenal, Concepción. Ensayo sobre el derecho de gentes. Madrid, Rev. de legislación, 1879. 309 p.

[6] Riquelme, Antonio. Elementos de derecho internacional público. Madrid, Santiago Sanque, 1849. 2 v.

[7] Landa, Nicasia. El derecho de la guerra conforme a la moral. 3rd ed. Pomplona, J. Sorda, 1877. 336 p.

a moral point of view is also considered one of the best productions of his time. The third edition appeared in 1877.

The best modern general treatise for reference purposes, although somewhat lacking in originality, is that of Olivart,[1] the fourth edition of which appeared in 1904 in four volumes. An abridged edition in one volume was published in 1906. The jurists Torres Campos[2] and Gestoso[3] have each published elemental treatises on international law. Fernández Prida,[4] professor of international law in the University of Madrid, has published a useful collection of studies dealing with topics of both public and private international law.

A treatise on international maritime law, published by Negrín,[5] in 1888, is considered authoritative to-day. A guide for the Spanish diplomat by Castro [6] contains some interesting discussions of legal topics. A periodical or review of international law (*Revista de derecho international y política exterior*) was established at Madrid in 1905 by Olivart, who assumed the position of editor and director, assisted by Herreros. The numbers appear irregularly and devote considerable space to the reprinting of texts of treaties, etc.

To supply the deficiency of works on international law by Spanish authors, translations of foreign treatises, such as those by Fiore, Bluntschli, etc., with Spanish notes are currently used.

CONFLICT OF LAWS

As in the case of all continental civil codes, although with less minuteness than in the German or Swiss codes, many pro-

[1] Olivart, Marqués de. Tratado de derecho internacional público. 4th ed. Madrid, V. Suarez, 1903–1904. 4 v.
Same. Derecho internacional público. 5th ed. Compendiada. Madrid, Rev. de derecho internacional y polit. Ext., 1906. 416 p.

[2] Torres Campos, Manuel. Elementos de derecho internacional público. 2d ed. Madrid, Fernándo Fé, 1904. 501 p.

[3] Gestoso y Acosta, Luis. Curso elemental de derecho internacional e histórica de los tratados. 2d ed. Valencia, Domenech, 1907. 2 v.

[4] Fernández Prida, Joaquin. Estudios de derecho internacional público y privado. Madrid, V. Suarez, 1901. 311 p.

[5] Negrín, Ignacio de. Tratado de derecho internacional marítimo. 2d ed. Madrid, Vinda é hijos de Abienzo, 1883. 594 p.

[6] Castro y Casaleiz, A. Guía práctica del diplomático español. Madrid, El Correo, 1886. 2 v.

visions on the conflict of laws or private international law are incorporated in the Spanish civil code. These provisions were discussed by Eugène Audinet in an article published in volume 18 of Clunet (1891), pages 1106–1129. A brief discussion, in pamphlet form, of questions relating to the conflict of laws in matters of the family (*familia*) and successions under the code was made in 1908 by Rubira.[1]

The most complete and useful Spanish treatise on private international law came from the pen of Prof. Conde y Luque,[2] Rector of the University of Madrid. The second edition was published in 1910. Another useful, but considerably more elementary, work is the recently (1913) revised edition of Torres Campos[3] book. Gestoso[4] has recently (1913) published an extensive treatise, covering all branches of the subject.

Attention may be directed to the introductory work of Prof. Fernández Prida[5] of the University of Madrid. The collection of studies by the same author (*supra*, p. 133) contains three interesting monographs on topics in private international law. It is interesting to note that despite the existence of numerous treatises and works by Spaniards on the conflict of laws, translations of foreign works, notably Fiore and Asser, are employed to a great extent by Spanish lawyers.

The legal position and condition of foreigners in Spain were discussed in some old French treatises now out of date. Torres Campos in the 18th volume of Clunet (1891), pages 108–119, published a sketch of the history of the position occupied by foreigners in Spanish legislation. Two works of some importance on questions of nationality and the law of aliens were

[1] Rubira Abarca, Alfredo. El derecho internacional privado y la jurisprudencia española en materia de familia y sucesiones. Madrid, Hijos de Reus, 1908. Pamphlet.

[2] Conde y Luque, Rafael. Derecho internacional privado. 2d ed. Madrid, V. Suarez, 1910. 2 v.

[3] Torres Campos, Manuel. Elementos de derecho internacional privado. 4th ed. Madrid, F. Fé, 1913. 583 p.

[4] Gestoso y Acosta, Luis. Nuevo tratado de derecho internacional privado . . . civil, procesal, penal y mercantil. Valencia, Domenech, 1913. 810 p.

[5] Fernández Prida, Joaquin. Derecho internacional privado. Valladolid, M. de la Cuesta, 1896. 312 p.

published in 1901 by Castro,[1] and by Conde y Luque,[2] respectively. A brief account of the position of foreign corporations in Spain, by Francisco Lastres, appeared in volume 33 of Clunet (1906), pages 273–278.

The subject of extradition is discussed in a small work by Gascón,[3] and in a more extended treatise by Walls [4] in which special attention is given to procedure. The extradition treaty between the United States and Spain now in force is that concluded June 15, 1904. It may be found in Malloy's Treaties, conventions, etc., 1910, volume II, pages 1712–1718.

Expulsion, from the point of view of international law and of Spanish legislation, is discussed in a work by Castro,[5] published in 1896 and condensed in his *Estudios* (*supra*), at pages 165–169. Torres Campos in volume 29 (1902), pages 291–295, and Lastres in volume 37 of Clunet (1910), pages 369–374, each contributed articles in French on the right of expulsion of foreigners in Spain.

Justice Cobian of the Spanish Supreme Court prepared an interesting account of the law relating to the execution of foreign judgments in Spain and Spanish-American countries for the *Revista de legislación*. Each country receives individual treatment. The article was translated and rearranged by Ardenne de Tizac, and may be found in volumes 39 and 40 of Clunet (1912), 1913, pages 1059–1071, 89–101.

It may here be noted that the important decisions of Spanish courts on questions relating to private international law are reported at regular intervals in the periodical of Clunet.

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[1] Castro y Casaleiz, Antonio de. Estudios de derecho internacional privado. Conflictos de nacionalidad. Condición de extranjero. Madrid, F. Fé, 1900. 303 p.

[2] Conde y Luque, Rafael. Oficios de derecho internacional privado. Nacionalidad. Situación del extranjero. Madrid, Hijos de Alvárez, 1901. 577 p.

[3] Gascón y Marin, José. La extradición ante el derecho internacional. Zaragoza, Turmo, 1896. 161 p.

[4] Walls y Merino, Manuel. Extradición y el procedimiento judicial internacional en España. Madrid, V. Suarez, 1905. 512 p.

[5] Castro y Casaleiz, Antonio de. El derecho de expulsión ante el derecho internacional y la legislación española. Ed. oficial. Madrid, 1896.

COLONIAL LAW.

After the acquisition by Spain of her American colonies, the first step towards devising a means for their government was the establishment of the *Casa de la contratación* at Seville in 1503. Its powers were described by Bernard Moses before the American Historical Association in 1894 (Annual Report (1894), pp. 93–123). The *Casa de la contratación* was later subordinated to the Council of the Indies, established in 1524. Spanish-America was governed from Spain by this Council, under authority and direction of the king, and its powers were greatly increased by succeeding sovereigns. The administration of the laws in the colonies was under the charge of viceroys or captains-general. The viceroy, his powers, and the general adminsitration of the Spanish colonies, especially Mexico, in the eighteenth century were discussed by Donald E. Smith [1] in a recent work (1913).

The office of *adelantado* was employed in mediaeval Spain and was extended in 1497 to the American colonies where it became of some importance. Roscoe H. Hill of Columbia University has discussed this office at some length in the December (1913) issue of the Political science quarterly, volume 28, pages 646–668. Roscher in his *Kolonien, Kolonial politik und Auswanderung* (3rd ed., Leipzig, 1885) devotes a few sections to the Spanish colonial system. The work is interesting, but incomplete, and it is criticized in that the writer is not impartial in his views. Professor Bourne [2] translated these sections into English with bibliographical notes.

The various laws enacted in Spain for the government of the colonies were first collected and digested by order of Philip IV. An incomplete compilation was made in 1661 but the first "*Recopilación de Indias*" [3] did not appear until 1680. A second edition of this collection or compilation was made

[1] Smith, Donald Eugene. The viceroy of New Spain. Berkely, Univ. of Calif. Press, 1913. 293 p.

[2] Roscher, Wilhelm. The Spanish colonial system. Translation by Edward Gaylord Bourne. New York, H. Holt and Co., 1904. 48 p.

[3] Recopilación de las leyes de los reinos de los Indias mandadas imprimer y publicar por la magistrat católica del Rey Don Carlos II. Madrid, 1680. 2 v.

in 1756, a third in 1774 and a fourth in 1791. The last[1] edition, conveniently indexed, appeared in 1841, in four volumes. It may be stated, however, that the older editions are more reliable. A chronological index[2] of the Spanish colonial legislation, covering the years 1680 to 1847, was published in 1848. The *Recopilación de leyes de los reinos de Indias* or, as it is commonly called, the *Recopilación de Indias* was a digest of the laws, royal orders, etc., issued from time to time by the Spanish government for the government of the colonies, and was not a complete code. Hence, it was necessary to supplement it by the general and common law of Spain. Thus, the civil law of Spain became the fundamental law of America, but there was a restriction in the *Recopilación de Indias* (1. 40, t 1, b. 2) to the effect that no law or statute enacted in Spain should be obligatory in America unless expressly commanded by the Council of the Indies. An old work by Murillo,[3] in Latin, discusses the manner in which the Spanish laws should be received in the Indies. The work deals primarily with canon law, but secular law on this point is discussed. Walton in his "Civil law" *(supra*, p. 36) gives a brief account of the laws of the Indies (pp. 518–526).

The *leyes de Indias*, or the old colonial laws, were collected in 1889, in thirteen volumes, by Guardia.[4] The work was undertaken at the request of and by support of the Spanish government. Rodríguez San Pedro,[5] assisted by several collaborators, compiled in 1869 the ultramarine legislation of the nineteenth century into 16 volumes, with annotations. In continuation of these two works a compilation of the legislation and decrees extended to the colonies, and judicial

[1] Recopilación de leyes de los reinos de los Indias . . . 5th ed. Madrid, Boix, 1841. 4 v.

[2] Indice cronológico de la serie de leyes, etc. . . . gobierno y administractión de las provincias de Indias desde 1680 hasta 1847. Madrid, 1848.

[3] Murillo Velarde, Petrus. Cursus juris canonici hispani et indici . . . Matriti, Fernández, 1743. 2 v.
Same. 3d. ed. Matriti, Ruiz, 1791. 2 v.

[4] Guardia, Miguel de la. Las leyes de Indias con las posteriores á esta código, vigentes hoy . . . Madrid, Nuñez, 1889. 13 v.

[5] Rodríguez San Pedro, Joaquin. Legislación ultramarina concordada y anotada. Con la collaboración de Antonio Fernández Chorot, Eduardo y Antonio Piera, y Manuel González Junguitu. Madrid, Viota, Cubas y Vicente, 1865–1869. 16 v.

decisions rendered in colonial litigation, was published by Fernández Martin,[1] in 10 small volumes.

There are no treatises or expositions, complete and satisfactory, on colonial law, for two reasons—first, all authors in the past have treated only of a few topics and, secondly, there are so many unedited documents lying in the archives of the Council of the Indies in Seville. The most interesting and useful exposition of the laws of the Indies is that by Solozano,[2] a member of the *Consejo de Indias*. The first edition appeared in Latin. There are various Spanish editions of equal value. A treatise discussing the laws anterior to the *Recopilación de Indias* was published by Maurtua[3] in 1906. The reviews of the work have been extremely favorable. A valuable historical account of the imperial legislation in the ultramarine provinces was begun in 1893 by Fabié,[4] but only the first volume, covering the early years, has appeared. Labra[5] in 1897 published a discussion of the important questions at that time before Spain, in relation to the law and administration of its colonies. A work of especial interest to the United States is the "Ultramarine political reform"[6] by the same writer. The public and administrative laws of the colonies are discussed, with an extensive treatment of the international aspect of the Cuban question in 1900. The law of 1891 in regard to

[1] Fernández Martin, Manuel. Compilación legislativa del gobierno y administractión civil de ultramar arreglada en virtud de reales órdenes de 8 de febrero de 1886 y 29 de enero de 1888 [y 27 de mayo de 1893]. Madrid, Lucas Polo, 1888–1894. 10 v.

[2] Solórzano Pereira, Juan de. Disputationem de Indiarum iure sive de iusta Indiarum occidentalium inquisitione, etc. Matriti, F. Martínez, 1629–39. 2 v.

(1st Spanish edition): Política indiana. Madrid, Diego Díaz de la Carrera, 1648. 2 v.

2d ed. Ambereg, H. & C. Vesdussen, 1703. 536 p.

[3] Maurtua, Victor Manuel. Antecedentes de la recopilación de Indias . . . Madrid, B. Rodríguez, 1906. 245 p.

[4] Fabié y Escudero, Antonio María. Ensayo histórico de la legislación española en sus estados de ultramar. Madrid, Sucesores de Rivadeneyra, 1896. 336 p.

[5] Labra y Cadrana, Rafael María de. Cuestiones palpitantes de política, derecho y administración. Discursos por . . . Madrid, A. Alonso, 1897. 502 p.

[6] Labra y Cadrana, Rafael Maria de. La reforma política de ultramar. Discursos de . . . 1869–1900. Madrid, A. Alonso, 1901. 1,116 p.

the administration of justice in the Spanish colonies, with appendices of related matters, has been translated by the United States War Department (*supra*, p. 87). The introduction to the work by Sánchez de Ocaña is also translated.

A collection of the laws, ordinances and regulations adopted from time to time by the Government of Spain, relating to the disposition of public lands in her colonies, was compiled in 1828 by Joseph M. White,[1] at the direction of the Attorney General of the United States, on the occasion of the settlement of land titles in Florida. Spanish public land laws in the Philippines,[2] with an account of their history up to 1898, were compiled by the Forestry Bureau in 1901.

Spanish law in the British Empire was discussed briefly by Charles E. Reis in an article in the January, 1914, Journal of the Society of Comparative Legislation, pages 24–33.

CANON LAW

Canon law, which during the Middle Ages was a "common law" for the whole of Europe, has exerted a lasting influence upon continental law and has played an important part in the development of Spanish secular law. A translation of the section of Brissaud's "History of French private law" dealing with the sources and general literature of canon law is included as part IX of the first volume of the Continental legal history series. Reig [3] in 1904 published a work on the influence of the canon law in Spain. An early work on the institutions of canon law by Gómez Salazar [4] is worthy of mention. The same author has also edited a manual.[5] Gol-

[1] House Ex. Doc. 121, 20th Cong., 2nd sess. Private land claims in Florida, by Joseph M. White. Washington, Gales and Seaton, 1828. 277 p.

[2] Spanish public land laws in the Philippines and their history to August 13, 1898, translated and compiled in the Forestry bureau under the direction, of George P. Ahern. Washington, Government Printing Office, 1901. 61 p.

[3] Reig y Casanovas, Enrique. Cuestiones canónicas. El derecho canónico en España, y su influencia. Toledo, Rodríguez, 1904. 323 p.

[4] Gómez Salazar, Francisco. Instituciones de derecho canónico. 3rd ed. Madrid, Hermanos de Minor, 1890. 3 v.

[5] Gómez Salazar, Francisco. Manual eclesiástico. Madrid, A. Gómez Fuentenebro, 1872. 1 v.

mayo's[1] "Institutions of canon law" has passed through seven editions, the last in 1896.

There are two useful treatises on ecclesiastical law in general, with special reference to Spanish law, a briefer one by Manjón[2] and a five volume work of Morales.[3] A prize work on the Spanish law in its relations with the church was published in 1902 by López Peláez.[4] The same author made another contribution a few years later in the form of "ecclesiastical studies".[5] In 1914, the first volume of a new work by Campos[6] made its appearance.

An interesting article by a Spanish professor appeared in 1911 in the North American Review, volume 193, pages 256–270, on the present conflict between church and state in Spain. The religious orders and corporations were discussed from a legal point of view by Buitrago[7] in 1901. A short article by André Tridon appeared in the forty-fourth volume (1910) of the Forum, pages 272–279, in which the political relations with the Vatican and the present symptoms of an economic readjustment are discussed. The legal situation of the Roman Catholic church in the different states of Europe and America has been discussed by Girón.[8] He has also published a discussion of the concordat between the Queen and the Holy See.[9]

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[1] Golmayo, Pedro Benito. Instituciones del derecho canónico. 7th ed. Madrid, Gabriel Sánchez, 1896. 2 v.

[2] Manjón, Andreu. Derecho eclesiástico general y español. 2d ed. Madrid, Huérfanos, 1891. 2 v.

[3] Morales y Alonso, Juan Pedro. Tratado de derecho eclesiástico general y particular de España. Madrid, Góngora, 1883–92. 5 v.

[4] López Peláez, Antolín. El derecho y la iglesia. Derecho usual. Madrid, Hijos de Gómez Fuentenebro, 1911. 550 p.

[5] López Peláez, Antolín. Estudios canónicos. Barcelona, Gustavo Gili, 1906. 1 v.

[6] Campos y Pulido, J. M. Legislación y jurisprudencia canónica novísima y disciplina particular, de España. Madrid, Hijos de Reus, 1914. 478 p.

[7] Buitrago y Hernández, Joaquin. Corporaciones religiosas . . . Madrid, A. R. de Castroviejo, 1901. 489 p.

[8] Girón y Arcas, Joaquin. La situación jurídica de la iglesia católica en los diversos estados de Europa y América. Madrid, V. Suarez, 1905. 379 p.

[9] Girón y Arcas, Joaquin. La reforma del concordato celebrado entre el Santa Sede y la reina de España. Madrid, V. Suarez, 1902. 1 v.

A work published under authority of the church and of special use for members of the clergy and modern ecclesiastical tribunals is the treatise of Miracle de Carbonell.[1] This work contains directions and advice for the clergy in cases of marriage, wills, etc. The old question of patronage between the Pope and the Spanish kings has been thoroughly discussed in the work of Vázquez,[2] which was awarded a prize offered by the Minister of State in 1882, and in an older work by Más.[3]

Cadena [4] published in 1892 a practical treatise on ecclesiastical procedure in civil and criminal matters. The first volume of Gómez Salazar and La Fuente's work [5] on procedure appeared in a second edition in 1890. It includes matrimonial procedure. The same authors published a work on ecclesiastical discipline or laws of conduct,[6] supplementary to the proceeding. The proceedings of the Inquisition have been discussed in a work of Melgares Marín.[7] The origin and ecclesiastical character of the institution, religious persecution, scandals of the inquisition, the priests, etc., are some of the interesting topics discussed.

Two valuable monographs on marriages and matrimony following the decree *ne temere* have come from the pens of

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[1] Miracle de Carbonell, Agustín. El parroco y el curial. Madrid, Hijos de Reus, 1904. 967 p.

[2] Vázquez y López Amor, Antonio. Examen histórico-legal del derecho de patronato de la corona de España sobre les lugares píos de Tierra Santa. Madrid, Hijos de Reus, 1882. 214 p.

[3] Más y Monzó, Felipe. Patronato eclesiástico de los reyes de España. Madrid, Hijos de Reus, 1871. 258 p.

[4] Cadena y Eleta, José. Tratado teórico-práctico de precedimientos eclesiásticos en materia civil y criminal. Madrid, L. Aguardo, 1891–1892. 2 v.

[5] Gómez Salazar, Francisco and La Fuente, Vicente de Tratado teórico-práctico de procedimientos eclesiásticos. 2d ed. Tomo I, Procedimientos matrimoniales. Madrid, Gómez Fuentenebro, 1890. 688 p.

[6] Gómez Salazar, Francisco and La Fuente, Vicente de. Secciones de disciplina eclesiástica y suplemento al tratado de procedimientos eclesiásticos. 5th ed. Madrid, Gómez Fuentenebro, 1894. 2 v.

[7] Melgares Marín, Julio. Procedimientos de la inquisicion. Madrid, L. P. Villavorde, 1886. 2 v.

Aquilar[1] and Ferreres.[2] The former's work has seen three, and the latter's five, editions. An interesting discussion by a prominent lawyer, Cabello,[3] of the supreme power in the public law of the church may also be mentioned.

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[1] Aquilar Jiménez, J. Nueva legislación sobre esponsales y matrimonios. 3rd ed. Madrid, Hijos de Reus, 1909. 244 p.

[2] Ferreres, Juan B. Los esponsales y el matrimonio. 5th ed. Madrid, Razón y Fé, 1911. 460 p.

[3] Cabello y Guillen de Toledo, Alfonso. La soberanía o suprema potestad en el derecho público de la iglesia. Madrid, Hijos de J. A. García, 1895. 207 p.

GLOSSARY

Abandono. Abandonment.
Abintestato. Intestate.
Abogado. Attorney at law, lawyer, barrister.
Abogado en ejercicio. Practicing attorney.
Abogado del estado. Attorney for state.
Abogado de oficio. Attorney appointed to plead for poor litigants.
Abogar. To argue or plead a case.
Aborto. Abortion.
Absolución de posiciones. Answers to interrogatories.
Acaparar. To corner the market.
Acaparador. One who corners the market.
Acción. A share of stock, lawsuit.
Aceptación. Acceptance.
Aceptar una letra. Honor or accept a bill.
Aclaración. Explanation, illustration.
Acomodación. Accomodation.
Acreedor escriturario. A creditor who proves his debt by means of a public notarial instrument.
Acreedor hipotecario. See *hipoteca*.
Acreedor refaccionario. A preference creditor. One who has advanced money for building purposes.
Actuaciones. The records of pleadings of a case.
Actuario. Judicial officer who authenticates all the documents in the suit.
A cuenta. On account, in part payment.
Acusación. Impeachment.
Acusar la rebeldía. To disclose resistance to orders of a judicial authoirty.
Adelantado. A mediaeval Spanish officer formerly employed in the American colonies.
Adjudicación en pago. The appropriation on application that is made judicially of the real or personal property of a debtor in favor of a creditor in order to cover the amount due to him.
Administración. The direction, government and care which a man or corporation has of the property under his charge of an inheritance of a minor, of an insane person, of a prodigal, of an establishment or of an individual; so that every guardian, curator or executor has an administration. Administration is in reality a power of attorney or mandate, and consequently produces the same obligations and rights as this contract.
Adulterio. Adultery.
Advertencia. Notice, remark, advice.
Agente. Agent.
Agente de cambios. Bill-broker.

Agotado. Out of print.
Albaceazgo. Executorship.
Alcabala. Excise or tax on sales.
Alcabala del viento. Duty paid by a visiting merchant.
Alcalde (of a town or city). Head of a district of a city. *Tenientes alcaldes*, all the alcaedes; *alcalde mayor*, president of the *tenientes alcaldes*.
Al contado. For cash.
Alguacil. Bailiff, lowest officer in the scale of officials in the administration of justice.
Alguacil mayor. Sheriff.
Alianza. Alliance.
Alistamiento. Levy, conscription.
Almacén. Warehouse.
Almirantazgo. Court of admiralty jurisdiction.
Almojarifazgo. Duty on imports or exports.
Alzamiento. Making a higher bid at an auction.
Allanamiento. Trespass.
Allanamiento de morada. Breach of the house or home.
Allanarse á la demanda. Admission by defendant of allegations in the plaintiff's complaint.
Amenaza. Threat.
Amillaramiento. Assessment of a tax.
Amortización. Mortmain.
Anotación preventiva. A preliminary and provisional entry of a claim upon real property. See *Beneficio de inventario*.
Anticipaciones. Advances.
Anticresia. Antichresis. An agreement by which the debtor gives to the creditor the income from the property which he has pledged, in lieu of the interest on his debt.
Añuario. Year-book.
Año económico. Fiscal year.
Aparcería. Partnership.
Apelación. Appeal to a higher court for reversal.
Apelación desierta. Abandonment of an appeal after it is entered.
Apercibimiento. Order of a judge or court enforcible by contempt proceedings.
A plazos. On credit.
Apoderado. Attorney (agent).
Apremio. Sale of attached property to pay the decreed debt.
Aprendizaje. Apprenticeship.
Apuntamiento. Extract from the record.
Arancel. Fee, tariff.
Armada. Navy.
Arras. Property given by a man to a woman either before or after their marriage. It must not exceed one-tenth of what he possesses.
Arrendamiento. Lease.
Arrendador. Lessor.
Arrendante. Lessor.

Arrendatario. Lessee.
Asegurado. Insured.
Asegurador. Underwriter, insurer.
Aseguramiento. Insurance, security.
Asesinato. Killing with premeditation, etc. Corresponds to our murder in the first degree.
Asiento. Entry (on records).
Asociación. An association (company).
Atentado. Criminal attempt.
Atribución. Prerogative.
Audiencia. Court of appeal, provincial court.
Autenticidad. Authenticity—act of authentication.
Auto. Decree or decision of a judicial body in regard to some question of fact, evidence or jurisdiction. Every judicial decision which is neither a final decision (*sentencia*) or decisions referring to matters of procedure (*providencia*).
Auto acordado. A decision rendered by a *consejo* or a superior court on some point applicable to its authority to be observed as a precedent. Also in plural is used to denominate the decrees of the council of Castile that were embodied in the *Nueva* and also the *Novísima recopilación*.
Autor. Principal (in a crime), author.
Autorización. Authorization.
Autos. Original file in the action.
Auxilio. Cooperation, aid, assistance.
Aval. Accommodation endorser.
Avaluo. Appraisement of property.
Aviso. A notice.
Ayuntamiento. Municipal government composed of a mayor and aldermen.
Balnearios. Public baths.
Bancarrota. Bankruptcy.
Bandera de paz. Flag of truce.
Bastanteo. Examination or impeachment by counsel of the authority or right, conferred on the solicitor, for bringing the action.
Beneficencia. Poor laws, charity.
Beneficio de inventario. The provisional right which the heir has of remaining free from liability to pay the creditors of the deceased beyond the value of the inheritance.
Beneficios. Profits.
Bienes. Property in general.
Bienes gananciales. Property acquired by the husband and wife by a common title during their marriage and while they live together, or what the husband or wife or either of them during their marriage and living as one may acquire by purchase or by means of labor and industry, as also the fruits of the private property that each brings to the marriage.
Bienes muebles. Personal estate.

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Bienes raíces. Real estate.
Bienes reservables. The property that can not be alienated but must be reserved for certain relatives.
Bigamia. Bigamy.
Billete. Ticket.
Billete de banco. Banknote.
Boletín oficial. Official gazette or bulletin of the province.
Bolsas de comercio. Commercial exchanges.
Buena fe. Bona fides.
Bufete. Lawyer's office, desk.
Cadastre. Official assessment of the quantity and value of the real property in any district, made for the purpose of justly apportioning the taxes payable on such property.
Cadena (perpetua, temporal). Confinement with chains worn at ankles and waist. Considered next to death penalty in severity.
Caducidad. Lapse (of action or proceedings); failure to take effect.
Cajero. Cashier.
Calumnia. False imputation of a crime, either oral or written, which was the cause of a prosecution, slander.
Cámara de compensación. Clearing house.
Cancelar. Cancellation, to cancel validly.
Capacidad. Capacity.
Capellanía colativa. The capital and interest of a foundation that requires its possessor to be a clergyman.
Careo. Confrontation of the prosecuting witnesses by the accused for purpose of cross-examining them.
Cargador. Consignor.
Cargo. Office, burden.
Carta de fletamento. Charter-party.
Carta de naturaleza. Letters of naturalization.
Casación. Annulment or quashing of a judgment.
Caución. Bailbond or bail.
Caudal. Property, wealth, funds (plural).
Causa. A criminal suit or prosecution, consideration.
Causahabiente. Legal successor of a former litigant.
Cedente. Transferor.
Cédula. Order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign. A bond.
Cédula personal. Legal document or personal certificate every Spanish citizen must possess.
Cédula real. Royal letters patent.
Cencerrada. A disturbance of the peace in the form of mock serenades with horns and bells upon the marriages of widows or mismated couples.
Censatario. Payer of ground-rent, or one who pays an annuity out of his estate to another.
Censo. The contract whereby the right is acquired of receiving an annual pension on delivery of something. The right itself of receiving the pension. A perpetual annuity, or one for a term of years. Ground rent.

Censo de población. Census.
Censo electoral. List of voters.
Censo consignativo. Consignative ground-rent; rents from one holding land of a debtor for benefit of creditor.
Censo de por vida. Annuity for one or more lives.
Censo enfitéutico. Emphyteusis, a contract of a special nature in regard to use and occupation of land.
Censo frumentario. Grain-rent.
Censo reservativo. Reservative ground-rent.
Censualista. An annuitant; receiver of a ground-rent.
Censuario. The person in whose favor an annuity is granted, or he who has the right to receive the annuity. (Some writers use the word to signify the party who pays the annuity.)
Certeza. Certainty.
Cesión. Cession, transfer.
Cesionario. Transferee.
Cesión de bienes. Surrender of the estate of an insolvent debtor into the hands of his creditors.
Citación. Citation.
Citación de remate. Notice to debtor of intended sale of his goods to pay his debts.
Ciudadano. Citizen.
Coacción. Act of compulsion.
Cobrar. To collect.
Cobro, Cobranza } Collection.
Código. Code.
Cohecho. Bribery.
Comercio. Commerce.
Comisión. Commission.
Comisionista. A factor, commission merchant.
Comisionista de garantía. *Del credere* factor.
Comiso. Every description of confiscation. The reversion of the useful ownership of an *enfiteutic* property to the direct owner in case of the party charged not paying him the tribute. Property confiscated is also styled *comiso*.
Comitente. The principal.
Compañía anónima. A limited stock company or business corporation.
Compañía colectiva. Unlimited partnership.
Compañía de seguros. Insurance company.
Compañía en comandita. A limited partnership. A partnership where there are "silent" members who are only liable to the amount they invest.
Comparencia en juicio. Act of appearing before a judge and demanding justice.
Compendio. Summary, abridgment, compendium.
Compensación de crédito liquido. Set off producing effect of payment.
Competencia. Jurisdiction.
Competencia ilícita. Unfair competition.

Cómplice. Accomplice.
Compra. Purchase.
Compraventa. Bargain and sale.
Comprobación. Proof, comprobation.
Con arreglo. In conformity with.
Concejal. Member of a public board or city council.
Concejil. Referring or concerning to *concejal.*
Concejo. Civic body of a small town.
Concejo abierto. Meeting of the inhabitants of a small town presided over by the mayor to deliberate upon public affairs.
Concurrencia. An equality of rights or privileges which several persons have over the same parcel of debtor's property.
Concurso. The suit instituted either by the debtor or by the creditors as to payment of debts. The meeting of creditors. A competition or contest.
Condición resolutoria. The condition which, on being fulfilled, produces the revocation or invalidation of the contract, and places matters in *statu quo.*
Confianza. Confidence.
Confinamiento. Confinement, a species of banishment.
Congreso. Lower body of the Spanish parliament or *cortes.*
Conocer. To take cognizance, to try a cause (by a court).
Conocimiento. Judicial notice, cognizance, bill of lading.
Consejo. Council.
Consejo de estado. A consultative body of persons chosen by the king to take cognizance of matters of the greatest interest to the government and administration of the kingdom, both home and foreign. Council of State.
Consentimiento. Assent, consent.
Considerandos. Paragraphs setting forth legal grounds on which a judgment is based.
Consignatario. Consignee.
Conspiración. Conspiracy.
Constitución. Constitution.
Consulaje. Fees paid to consuls by all merchant vessels.
Contenencia á la demanda. Demurrer.
Contestación á la demanda. Defendant's plea, or answer.
Contrabando. Smuggling.
Contratación. Trade, commerce.
Contrato. Contract.
Contribución. Tax.
Contribuyente. Taxpayer, contributor.
Convenio. Pact, agreement, convention.
Conyuges. A married couple, consorts, husband and wife.
Copia original. The first copy, granted and signed by the identical notary who attested the original instrument.
Corona. Throne, crown.
Corporación. Corporation.
Corredor. Broker.

Corredor de cambios. Exchange broker.
Correduría. Brokerage.
Corregidor. Administrative head of a town, mayor. See *alcalde*.
Correo. Post, mail.
Correspondencia. Mail (correspondence).
Correspondiente indemnización. Due compensation.
Cosa juzgada. Res judicata.
Costas. Costs.
Costumbre. Custom, duty.
Criminología. Criminology.
Cualificado. Qualified.
Cuasi contratos. Quasi contracts.
Cuenta. An account, reckoning, computation.
Cuenta-corriente. Current account.
Cuenta de resacar recambio. Return account.
Cuenta de venta. Account—sales.
Cuerpo del delito. Corpus delicti.
Culpable. Guilty.
Culto. Worship, religious belief (also culture).
Cumplimiento. Performance.
Curia. Ecclesiastical court, tribunal.
Curial. Member ecclesiastical court.
Cheque. Check.
Dar cuenta. To answer, to give account.
Dar fianza. To give bail or pledge, or earnest money in a trade.
Dar fe. To attest, to certify.
Datería. Datary, office of the chancery at Rome where the Pope's bulls are expedited.
Deber. Duty, obligation.
Deber (verb). To owe, ought.
Debido curso. Due course.
Declaración. Deposition.
Declinatoria. Plea to jurisdiction before the judge who has not jurisdiction in order for him to abstain and to send record to proper court.
Decreto. Order similar to *cédula* in ecclesiastical matters.
Dedicarse. To practice (a profession)
Defensa. Defense.
Defraudaciones. Frauds.
Delincuente. Offender, criminal.
Delito. One of the two divisions of crimes. This is the greater and comprehends crimes dangerous to the person and property, violations of laws done intentionally. Felony.
Delito consumado. Consummated crime.
Delito frustrado. Crime not consummated on account of a cause purely independent of the will of the actor.
Delito de incendiar. Arson.
Demanda. The written declaration or complaint in pleading.
Demencia. Lunacy.
Derecho. Right, law in general, body of law.

Derecho administrativo. Law of administration of public business and the government.

Derecho civil. Civil law.

Derecho canónico. Ecclesiastical or canon law.

Derecho común. The civil or general law of a place, as distinguished from the particular or municipal law of a province, district, or city, or from any special or privileged law, as the military, ecclesiastical and commercial.

Derecho contencioso-administrativo. See *jurisdicción*.

Derecho de gentes. Natural law, such as prevailed among foreign nations, as contrasted with the Roman law. International law.

Derecho foral. Local statutory law. Special law of certain provinces.

Derecho internacional privado. Conflict of laws.

Derecho internacional público. International law.

Derecho no escrito. Unwritten law, established custom.

Derecho militar. Military law.

Derecho mercantil. Commercial law.

Derecho penal. Criminal law.

Derecho político. Political science (in broad sense). Constitutional law (in the restricted sense).

Derecho procesal. Procedural law.

Derecho real. The inherent right to a thing, so that it is not extinguished by the death of him who possesses it, but which always exists therein into whosoever hands the thing may be transferred.

Derogación. Repeal.

Desahucio. Ejectment of tenant at expiration of term.

Desamortizar. To disentail, to break an entail.

Descuento. Discount.

Desembolso. Disbursement.

Desempeño. Performance, act of redeeming a pledge, exercise (of a profession).

Desistimiento. Voluntary abandonment of the litigation.

Destierro. Exile, judicial banishment.

Detención. The arrest.

Detencion ilegal. False imprisonment.

Detener. To arrest.

Deuda. Debt.

Deudor. Obligor, debtor.

Día de trabajo. Working-day.

Diario de avisos. Official gazette of the locality or district.

Diccionario. Dictionary, encyclopedia.

Dictamen pericial. Opinion of expert witness in a trial.

Diligencia. Execution or performance of an order of the judge.

Dinero. Money.

Diputado. Representative in the *Cortes* elected by the people in the electoral districts in which Spain is divided (as distinguished from a senator).

Discordia. Disagreement of the judges.

Disfrutar. To gain advantage, reap benefits, enjoy.

Divorcio. A divorce.
Doctrina legal. Rules of law which the Supreme Court draws up in its judgments in order to found its decrees
Documental. Documentary.
Documento. Instrument, document.
Documento negociable. Negotiable instrument.
Domiciliado. Person who, though not *sui juris*, resides permanently in and forms part of the house of a *vecino*.
Domicilio. Permanent dwelling place of a *vecino* and *domiciliado*, domicile.
Dominio. Ownership.
Dominio directo. The right which a man has of concurring in the disposal of a thing the produce whereof he has assigned; or of receiving a certain pension or annual tribute in acknowledgement of his seigniorial right or superiority over the property. The right of superiority of a real estate without the right of useful ownership.
Dominio supremo. Eminent domain.
Dominio útil. The right of receiving all the fruits of a thing upon paying a contribution or tribute to him who preserves therein the direct ownership.
Dotación. Revenue.
Duelo. Duelling.
Dúplica. Rejoinder.
Edicto. Public order of a judge or court issued on default of a party or to notify a large number of people of an auction sale, etc.
Efecto. Effect, consequence.
Efecto devolutivo. The cognizance which by means of an appeal the superior judge takes of the decrees of the inferior court without suspending their execution, but referring them back for reconsideration.
Efecto suspensivo. The cognizance which in virtue of an appeal, the superior Judge takes of the decrees of the inferior, suspending their execution.
Efectos. Effects, movables, drafts, assets.
Efectos en cartera. Bills in hand.
Efectos públicos. Public securities.
Efectos á pagar. Bills payable.
Efectos á recibir. Bills receivable.
Ejecución. Execution.
Ejecutoria. Public document in which a final judgment is transcribed. Final decree.
Ejercer. To practice (a profession).
Ejército. Army.
Embargo. Attachment of debtor's property, sequestration, embargo.
Embajador. Embassador
Emitir. To issue.
Empate. Tie vote.
Emplazamiento. Summons of the judge directed to the defendant to appear and answer the claim.
Empleado. Employee.

Enajenación. Alienation.
Enajenar. To alienate, transfer.
Encargado de negocios. Chargé d'affaires; agent, attorney (Mex.).
Encubridor. Accessory after the fact, concealer, etc.
Endosante. Indorser.
Endosatario. Indorsee.
Endoso. Indorsement.
Enfiteusis. Lease.
Enjuiciamiento. Procedure.
Enmienda. The correction of some error or defect. The satisfaction and payment of losses incurred. The revocation or correction of some sentence.
Entrega. Delivery.
Entre sí. Inter se.
Equipaje. Baggage.
Error. Mistake.
Es bastante. "It is sufficient," formula used in certifying to sufficiency.
Escalamiento. Entry into a building by sneaking into it or climbing the walls as opposed to burglarious entry.
Escribano. Clerk of court of first instance.
Escrito. Writing.
Escritor. Writer, author.
Escritura pública. Document executed with legal formality before a notary.
Espera. Extension of time in a debt, adjournment.
Estado. State, commonwealth.
Estado seglar. Layman, secular or lay rank.
Estatuto. Statute law. Plural used to name a charter or by-laws of a company, etc.
Estafa. Swindle.
Estelionato. A fraud, generally applied to the fraudulent sale or mortgage of property previously sold or mortgaged.
Estrago. Malicious destruction of property.
Estupro. Seduction, constupration.
Evicción. Eviction, implied warranty of title in sales.
Examen. Examination.
Excepción. Defense, plea.
Excepción delatoria. Dilatory plea.
Excepción perentoria. Demurrer.
Excusión. The exhaustion of the judicial or extrajudicial proceedings so as to have recovered all the value of the debtor's property. Also the liquidation of the debtor's estate for benefit of his creditors.
Exhorto. Letters requisitorial sent by one judge to another
Expedidor. Shipper, consignor.
Expendición. Sale.
Expropiado. Dispossessed.
Expropiación forzosa. Dispossession from ownership for public use or by eminent domain.
Extinción. Extinction.

Extradición. Extradition.
Extranjero. A foreigner (different country). See *Forastero.*
Extrañamiento. Expulsion.
Extravio. Deviation.
Factor. Manager, factor.
Fadiga. The right possessed by the seignior in the direct ownership whenever the thing bailed or leased is alienated, so as to retain it for the sum that the purchaser offers.
Fallo. Synonymous with *auto* or *sentencia*, but especially the part of the latter in which the judge or court actually renders its decree or decides the questions in dispute is called the *fallo*. So called because that part by law must begin with the word *fallo*.
Falta. Division of lesser crimes, misdemeanor.
Falta de aceptación. Nonacceptance.
Falta de pago. Nonpayment.
Falsificación. Counterfeiting, also forgery.
Fazaña. Sentence given in a suit.
Fecha. Date.
Fechado. Dated.
Feligresía. District of a parish, its inhabitants.
Fianza. Bond (criminal law), security.
Fideicomisario. A devisee or legatee who is to deliver the devise or legacy at some future time to another; also a legatee beneficially interested in property left to another in trust; also an executor; cestui que trust.
Fideicomiso. Trust, the res of the trust, feoffment to use.
Fiduciario. Legatee, trustee or the heir of a legatee trustee.
Fieldad. Sequestration, security.
Filosofía. Philosophy.
Firma. Signature, partnership.
Firma entera. The complete signature comprising both the christian and surname.
Fiscal. State's attorney, prosecutor, etc.
Fiscalía. Business or profession of a fiscal.
Fletamento. Affreightment.
Fomento. Development, patronage.
Fomento, ministerio de. Department of public works, education, commerce, agriculture and manufactures in Spain.
Fondos. Funds.
Foral. (Used as adjective, with nouns like "law," "government," etc.) Special rights or the law of a province or town which was originally granted by the king in their charters. Local or provincial law.
Forastero. Foreign as between different provinces of same country. See *extranjero.*
Formación de causa. Process of law.
Frutos en specie. Fungible goods.
Fuera. Out, outside of.
Fuero. Statutory law, compilation of laws, jurisdiction of a court.

Fuerza mayor. Vis major (as "Act of God").

Funciones fiscales. Duties of the solicitors for the state in the superior and supreme courts in the interests of the public treasury and other public causes.

Fundación. Revenue established for any purpose, a foundation.

Gaceta de Madrid. Official gazette (daily) of the Spanish government. Contains texts of new laws, orders, etc. of the decisions of the Supreme Court.

Gananciales. See *bienes gananciales*.

Garantía. Warranty.

Garrote. The screw or apparatus used in Spain for the execution of criminals.

Gasto. Expenditure, cost.

Gastos. Expenses, disbursements, charges.

Giro. Draft note, bill, etc. (general word).

Gobierno. The government.

Golfo. Vagabond, outlaw, term applied to the degenerate scum of a city.

Gravamen. Lien, encumbrance, mortgage, charge.

Haberes. Wealth.

Hábil (día). Day on which the courts sit.

Habilitación del letrado. The formal admission by the State of a lawyer to practice in the courts.

Habitante. Resident, but not necessarily citizen.

Hacer fe. To acknowledge, to certify. The sufficiency of any statement or writing, as proof, is acknowledged when it is said that it makes faith.

Hacienda. Public property of all kinds, land, also public revenue.

Hacienda pública. Public treasury, finances.

Heredero. Heir.

Heredero legal. Heir at law.

Heredero fiduciario. Heir trustee.

Herencia. Inheritance.

Hijo. Child or other descendant, son.

Hipoteca. Mortgage, mortgage contract.

Hológrafo (also ológrafo). Will or last testament of a person wholly written in his own hand, signed and dated by testator.

Hombre bueno. Arbitrator in the attempt to arbitrate legal disputes before suit is actually begun.

Homicidio. Manslaughter.

Honorario. Fee.

Huelga. A strike, lockout.

Hurto. Theft, thievery.

Imprudencia. Negligence.

Impuesto. Tax, impost.

Incendio premeditado. Arson.

Incidente. Question that arises between the parties in litigation during the course of the principal action. Interlocutory application.

Incoar un juicio. To bring suit.

Incommunicado. Prisoner in the solitary confinement in which he is placed after arrest.
Indefensión. Unfairness; lack of defense caused by fraud.
Indemnización. Damages recovered by plaintiff.
Indultar. To pardon, to exempt.
Industrial. Person engaged in industries.
Infanticidio. Infanticide.
Informa. Pleading, report.
Informe pericial. Expert evidence.
Infracción. Violation, breach.
Inhábil (día). The day on which the courts do not sit, vacation day.
Inhabilitación. Disability, disqualification.
Inhibitoria. Motion before a judge having jurisdiction for removal of cause from court not having jurisdiction.
Inhumación. Interment.
Injuria. Slander and libel, outrage.
Inscripción. Record as public record for mortgages, etc.
Interdicción civil. Deprival of all rights under the civil code over the family or property of the condemned.
Interdicto de recobrar. Summary proceeding to recover possession of converted chattel.
Interés. Interest.
Interés legal. Interest fixed by law.
Interés convencional. Stipulated interest.
Jornal diario. Daily wages.
Jubilación. Retirement of an officer or employee of the government on a pension or reduced pay on arrival at certain age.
Juego. Gambling, game.
Judicatura. Judiciary.
Juez. A Judge.
Juez arbitrato. Arbitrator, umpire.
Juez de letras (juez letrado). A justice of the peace of a small district, who, being a counsellor at law, has more authority in certain cases than other justices.
Juez instructor. Examining magistrate in criminal prosecutions. Investigation carried on while the accused is in solitary confinement.
Juez de primera instancia. Trial judge.
Juez ponente. The judge who draws up in writing the opinion of the court, himself and colleagues.
Juicio. A suit, act of judging, judgment, proceeding.
Junta. Council, board, meeting, convention.
Junta de comercío. Board of trade.
Junta de gobierno. Executive committee.
Jurado. Jury.
Juramento. Oath.
Juramento asertorio. Declaratory oath.
Juramento decisorio. Oath taken by deponent when party seeking his deposition admits whatever said as incontrovertible evidence.
Juramento falso. Perjury.

Juramento indecisorio. Oath that can only hurt the deponent.
Jurisdicción. Jurisdiction.
Jurisdicción contencioso-administrativo. Jurisdiction in which are decided questions in litigation arising between the administration acting within its jurisdiction and individuals who consider their rights damaged by the act thereof.
Jurisprudencia. Court decisions, "judge made" law, legal science.
Jurista. Jurist.
Jurisconsulto. Jurist.
Justicia. Justice.
Juzgado. Court of first instance.
Legítima. That part (two-thirds) of the paternal or maternal estate of which the testator can not disinherit his children without legal cause.
Legítimo. Legitimate.
Legislación. Legislation.
Lego. A novice. Laybrother in monastery.
Lesa majestad. Leze-majesty or high treason.
Lesión. Personal injury inflicted by violence.
Letra de cambio. Bill of exchange.
Letrado. Lawyer.
Levantamiento. Revocation, withdrawal.
Ley. Statute, act.
Liberación. Discharge.
Libertad. Liberty.
Librado. Drawee.
Librador. Drawer.
Licensia. Permission.
Lícito. Licit, lawful.
Litigar. To sue, to litigate.
Litis pendencia. Lis pendens.
Loco. Lunatic, insane person.
Magistrado. Magistrate.
Mala fe. Bad faith.
Malicia. Malice.
Malversación. Maladministration.
Mancebo. Assistant.
Mancomunadamente. Jointly, by common consent.
Mandamiento. Order by judge to subordinate officer.
Maquinación. Artifice.
Marca (de fábrica). Trade mark.
Masa de la quiebra. The total assets of bankrupt estate liable to debts.
Matrimonio. Marriage.
Matriz (escritura). The original instrument or document, stub of check book.
Mayor edad. Majority, full age.
Mayoría. Majority.
Media firma. Surname.
Medida. Measure.

Mejora. Advantage, or the portion of the estate reserved as *legítima* by law which the parent or testator may appoint to a particular or child descendant.
Menor edad. Minority, infancy.
Ministro de hacienda. The Secretary of the Treasury.
Moneda. Coins, metallic money.
Morada. Dwelling-house.
Mostrarse parte. To intervene or take part voluntarily in an official proceeding.
Muerte. Death.
Mujer casada. Married woman.
Multa. Fine, forfeit.
Municipio. Municipality.
Nacer. To be born.
Nato. Used with and to mean *ex officio*.
Naturaleza. Nationality, naturalization.
Negado. Incapable, unfit.
Negar. To deny, to refute an accusation.
Negligencia. Negligence.
Nombrado. Nominee.
Nombrador. Nominator.
Nombramiento. Appointment.
Nominador. Nominator.
Nominilla. Warrant or certificate enabling a pensioner of an office to draw his dues.
Nomino. Nominee.
Nomógrafo. Nomographer, a writer on laws.
Norma. Standard.
Notario. Notary.
Noto. Bastard, illegitimate.
Novación. Novation.
Novel. New, inexperienced.
Nulo. Invalid, null.
Numulario. A banker.
Nunciatura. Office or house of a nuncio.
Nuncio. Envoy or ambassador from the Pope to Roman Catholic princes.
Nuncupativo. Nuncupative.
Obligación. Bond; also a contract of obligation.
Obligación de probar. Burden of proof.
Obligado. Obligation.
Obrero. Workman.
Oferta. Tender.
Oficina de correos. Post-office.
Oficina de patentes. Patent office.
Oído. A hearing.
Ológrafo. See *hológrafo*.
Ordenamiento. Orders emanating from the king and differing from *cédula* only in form and in mode of promulgation.
Otorgar. To execute an instrument, to authorize.

Otorgante. Grantor, party who signs and executes any notarial instrument.
Otrosí, "Moreover." Technical word used to introduce a paragraph containing matter different from the principal object of the document.
Pacto. Agreement, pact.
Pagaré. Promissory note.
Pago. Payment.
Pago parcial. Installment.
Parafernales (bienes). Parapherna. Goods brought by wife to husband over and above her dowry.
Parcería. See *Aparcería*.
Parricidio. Parricide. Includes all degrees of consanguinity as well as the relation of husband and wife.
Párroco. Rector or incumbent of a parish, a priest.
Parte beneficiada. Accommodated party.
Parte por acomodación. Accommodation party.
Particular. Private person.
Partido. One of the judicial districts into which the provinces are divided; an agreement.
Parto. Childbirth.
Patente de invención. Patent.
Patria potestad. Parental power.
Patronato. Patronage, patronship.
Patrono. Master, employer.
Paz. Peace, truce.
Peculio. Estate or property which a child possesses as separated from the property of his father.
Pena. Punishment, penalty.
Pensión. Rent or annual tribute imposed on landed estate. Pension.
Perito. An expert.
Perjuicio. Prejudice.
Perjuicio (sin). Without prejudice.
Perjurio. Perjury.
Personarse en juicio. Appearance of defendant by attorney in court.
Personas jurídicas. Juridical persons. Corporations, associations and institutions of public interest.
Pesquisa. Inquisition, name for old form of prosecution, search, investigation.
Petición. Petition.
Picota. Pillory.
Piratería. Piracy.
Pleiteante. Litigant.
Pleitear. To sue, to go to court.
Pleito. Civil lawsuit.
Plus minusve. More or less.
Plus petición. Excessive relief or damages.
Poder. Power of attorney.
Poligamia. Polygamy.
Política. "The art of governing the people."

Policía. Police.
Portador. Bearer (as negotiable instrument payable to).
Porteador. Carrier.
Posadero. Innkeeper.
Posición. An interrogatory (in writing).
Postura. Offer or bid at an auction.
Práctio. Practice.
Pragmática. See ordenamiento.
Predio. An inheritance, land or immovable possession.
Predio dominante. Land or property to which there belongs an easement over other property.
Predio seviente. Land or estate owning an easement to a dominant estate. Servient estate.
Prisión. Imprisonment, confinement, seizure.
Prejudicial. Requiring a previous judicial decision before the final sentence.
Prelación. Preference.
Prenda. Pledge.
Prescripción. Prescription, statute of limitations.
Presentación. Presentment.
Presidio. Punishment by hard labor, jail.
Presidio mayor. } Major and minor arrest. Confinement for periods pro-
Presidio menor. } vided in the penal code at hard labor.
Prestamista. Pawnbroker.
Préstamo á la gruesa. Bottomry loan.
Presunción. Presumption (legal or of fact).
Presunto. Suspected.
Presupuesto. Budget of state, estimate.
Previsión. Old-age pension.
Previsto. Provided (for or by).
Probatoria. Time allowed for producing evidence.
Precesado. The accused, defendant.
Procurador. Attorney, attorney at law, solicitor.
Procurador fiscal. Public attorney named by the king to promote and defend in the supreme and superior courts the interests of the exchequer and other public causes.
Pródigo. A man who by sentence of a judge has been deprived of the free administration of his property by reason of his leading a dissipated life. He is put on the same footing with a lunatic and disqualified from doing legal acts.
Producto. Proceeds.
Profanos. Persons outside of legal profession, laymen.
Promotor fiscal. The minister appointed to promote the observance of penal laws, or he who in a criminal case is named by the judge to prepare and support the accusation against the criminal.
Prontuario. Compendium or digest.
Propietario. Proprietor.
Propriedad inmueble. Real property.
Propriedad mueble. Personal property.

Protesta. Protest (of a bill).
Protocolo. A file or archive of original instruments left with the notary, the parties having certified copies only. A registry.
Protutor. Vigilant guardian, one appointed to see that the guardian does his duty and also to represent the ward in and out of court when his interests are adverse to those of the guardian.
Providencia. Judicial decision referring to matters of procedure.
Proyecto. Bill, scheme, design, plan.
Proyecto de ley. Bill (introduced in legislative body), a proposed form for a statute.
Prueba. Evidence, proof.
Pueblo. Town, people, nation.
Puerto. Port.
Quiebra. Bankruptcy.
Quebrado. Bankrupt.
Quebrado alzado. A bankrupt who has fled from his business address to avoid creditors.
Quebrantamiento de forma. Violation of form or of a rule of procedure.
Querella. The indictment or information in criminal investigations.
Quinto. The one-fifth part of an estate which a man can dispose of to strangers by his will.
Quita. Partial release by creditor.
Ramo separado. Separate file.
Rapto. Abduction.
Ratero. Pickpocket.
Ratificación. Ratification.
Razón social. Firm name or the distinctive name of unlimited and limited partnerships.
Real cédula. Royal dispatch signed by the king and issued by some superior tribunal, wherein some favor is granted or some interlocutory decree is made.
Rebeldía. Default, contempt. (Used in both civil and criminal matters.)
Rebelión. Rebellion.
Recibo. Receipt.
Recomendatario. Referee in case of need (used in negotiable instruments).
Reconvención. Counterclaim.
Recopilación. Digest, compilation.
Recurso. Appeal.
Recusación. Challenge, exception.
Reembolso. Reimbursement.
Refrendar. To countersign.
Regente. The chief justice of a body composed of several tribunals in combination.
Regidor. Alderman of a city.
Régimen. Government, management.
Registro. Examination, act of searching, also a register.
Registro civil. The civil registry.

Reglamento. Written instruction given by a competent authority without the observance of any peculiar form; provision for carrying into execution a statute already enacted.
Reintegro. Repayment.
Reivindicación. Replevin, recovery.
Reivindicar. To replevy, to recover.
Relator. Person appointed and deputed in every appeal court to make a summary of facts of the various cases for the judge.
Remate. Auction, highest bid at auction.
Remisión. Remitting.
Remolque. Towage.
Renuncia. Waiver.
Reo. Offender, criminal.
Reportimiento. Allotment, division.
Repertorio. Index, digest.
Repetición. Claim, action for accounting.
Réplica. Replication in pleading.
Reponerse. To be annulled.
Reprensión. Reprimand (public).
Represalia. Reprisal.
Requerimiento. A demand.
Resarcimiento. Indemnity damages, compensation.
Resguardo. A receipt, collateral security.
Residencia. Residence, also sometimes means place where one lives with certain constancy.
Residente. Resident. Refers popularly to both a *vencio* and *domiciliado*.
Resolución. Decision, resolution.
Responsabilidad. Liability.
Retracto. Right of replevying or recovering a thing sold to another.
Resultandos. The setting forth of the facts forming the basis of the judicial decision.
Revisión. Review.
Revocar. To revoke.
Riego. Irrigation.
Rifa. Lottery.
Ritorno. Renvoi.
Robo. Robbery and includes burglary.
Rúbrica. A mark or flourish usually placed under one's signature as an added obstacle to forgery. [It is not the signature.]
Sacar testimonio. To make a certified copy.
Salario. Wage, earnings.
Salario medio diario. Average, daily earnings.
Salvaguardia. Protection.
Salvoconducto. License or permission.
Saneamiento. Security, indemnification. Also in administrative law, drainage.
Sano de juicio. Perfectly sound in mind.
Sedición. Sedition.

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Seguro. Insurance.
Seguro dotal. Endowment insurance.
Seguro sobre vida. Life insurance.
Seguro contra incendio. Fire insurance.
Seguro contra accidentes (or) percances. Accident insurance.
Sello. Seal.
Senado. Senate.
Senador. Senator.
Sentencia. Final judicial decision.
Sentencia absolutoria. Judgment where request demanded is refused.
Sentencia condenatoria. Decision in which something is commanded to be done or enjoined.
Sentencia firme. An irrevocable judgment or decision.
Señoraje or señoreaje. Seigniorage.
Señorío. Seigniory.
Servidumbre. Easement both personal and real.
Síndico. Assignee, receiver.
Sin perjuicio. Without prejudice.
Sisa. Excise.
Sobreseimiento. Dismissal, discontinuance (of legal proceedings).
Socio. Shareholder, a partner, member of a club, etc.
Solidariamente. Severally.
Subasta. Judicial sale of goods by public auction.
Súbdito. Subject of a country.
Subsidio. Subsidy.
Suceso incierto. Contingency.
Sucesor inmediato. The heir presumptive, the next succeeding.
Sueldo. Salary, pay (not "wages").
Suma. Sum.
Sumario. Preliminary investigation in criminal suits, similar to our secret investigations by the grand jury. Preparation for trial.
Sumariamente. Summarily.
Suplicatorio. Letters rogatory, or a writ or any legal instrument sent in the king's name by a tribunal or judge to another of equal authority that they may attend to what is solicited.
Suposición. Bogus representation.
Suspensión. Removal or suspension (from office).
Sustracción. Abduction, pick pocket or purse snatching.
Tabernero. Saloonkeeper or tavernkeeper.
Tablón de edictos. Official bulletin board in the courthouse for advertising notices.
Tacha. Incapacity.
Talón. Check, coupon, receipt, bill, etc.
Talonario. A coupon or check-book.
Talón de transporte. Bill of lading.
Tanteo. Agreement or right to sell or buy at same price bid for by others at auction.
Tenedor. Holder.
Tener tacha. To be legally incapable.

Tentativa. Attempt.
Tercería. Interlocutory proceeding. Arbitration.
Tercio. The third part of an estate a testator can dispose of as he pleases when he leaves no descendants, only ascendants.
Términos de gracia. Days of grace.
Territorio. Territory.
Tesorería. Treasury.
Tesorero. Treasurer.
Testamento. A will.
Testigo. Witness.
Testimonio. Testimony.
Título. Title.
Tontina. Tontine, annuity insurance.
Trabajo. Work, labor.
Traducción. Translation.
Traición. Treason.
Tramitación del incidente. Interlocutory proceeding.
Trámite. Judicial process.
Transacción. Contract, compromise, transaction.
Transeunte. Every person living in a place not a *vecino* or a *domiciliado*, transient.
Transgresión. Infringement.
Transporte de viajeros. Carriage of passengers.
Tratado. Treaty, treatise.
Tribunal. Court.
Tribunal de cuentas. Exchequer.
Tribunal supremo. Supreme court.
Tutela. Guardianship.
Tutor. Guardian.
Uso. Usage.
Usurpación. Usurpation.
Valor. Value.
Vecindad. Residence, right acquired by residing in a place given by law.
Vecino. Native Spaniard, *sui juris*, habitually and permanently residing in a place.
Vencimiento. Maturity (of a bill) sometimes "vencimiento de plazo."
Vender. To sell.
Venta. Sale.
Vinculación. Entail, act of entailing.
Vincular. To entail an estate.
Violación. Rape.
Visar. To mark "approved."
Visto bueno. The mark or formula "approved."
Vitalicio. During life.
Vitalicista. An annuitant or person with an income for life.
Viuda. Widow.
Voto. Vote.
Yusión. Order, precept.

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